

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-7327

United States Court of Appeals
FOR THE SECOND CIRCUIT

DORSEY & Co., INC.,

Plaintiff-Appellant,

against

BANQUE NATIONAL DE LA REPUBLIC D'HAITI,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT—
SOUTHERN DISTRICT OF NEW YORK

APPENDIX

TENZER, GREENBLATT, FALLON
& KAPLAN

Attorneys for Plaintiff-Appellant

100 Park Avenue

New York, New York 10017

(212) 953-1800

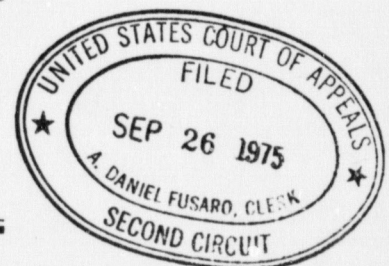
LUNNEY & CROCCO

Attorneys for Defendant-Appellee

20 Exchange Place

New York, N.Y. 10005

(212) 269-7700



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TRIAL TRANSCRIPT

Plaintiff's Witnesses:

1. Robert J. Vedros

Direct	64a [25-38]*
Cross	77a [38-83]

*[] Refers to page of transcript

- 2. Colloquy 124a [85]
- 3. Deposition of Gerard Martineau 124a [85-88]

Defendant's Witnesses

1. Gerard Martineau

- Direct 129a[113-116]
- Cross 134a[120-122]

2. Victor Pierre-Louis

- Direct 138a[124-126]
142a[129-130]
145a[137]

- 3. Deposition of George Dorsey 148a[144-146]

Relevant Docket Entries.

* * * * *

-75 ✓ Filed stip. that figures herein represent the closing prices of the stocks

-75 ✓ Filed Opinion # 42071...that the Courts findings no basis upon which to hold that pltf. was negligent in this transaction; Pltf. is entitled to recover damages as indicated herein: The parties have agreed that the market value of the securities on Oct. 2, 1972 was \$567,375, and that their value on Dec. 22, 1972 was \$530,405 a difference of \$36,970, to which sum pltf is entitled to judgment together with interest In view of the fact that pltf. has prevailed upon its claim, the deft counterclaim based upon the attachment heretofore granted is dismissed upon the merits The foregoing shall constitute the Court's findings of Fact and Conclusions of law. --Weinfeld, J

* * * * *

75 ✓ Filed JUDGMENT # 75,377 that pltf. Dorsey & Co. Inc. recover of the deft. Banque National de La Republic D'Haiti the sum of \$35,687.50 with interest thereon, at the rate of 6% as provided by law, from Oct. 2, 1972 together with costs of action --Weinfeld, J. Judgment entered 4-30-75--clerk

* * * * *

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

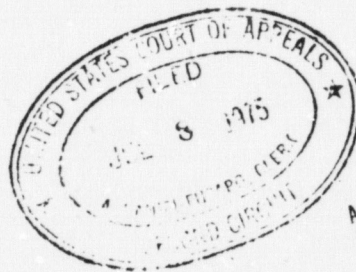
[Signature]
Notary Clerk

2a

Relevant Docket Entries.

* * * * *

July 7-75 Filed transcript of record of proceedings dated Feb 24-1975.



A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [Signature]
Deputy Clerk

Opinion, No. 42071, Findings of Fact and
Conclusions of Law of District Judge
Weinfeld.

EDWARD WEINFELD, D. J.

Plaintiff, Dorsey & Company, Inc., a stock brokerage house located in New Orleans, Louisiana, brought this action against Banque National De La Republic D'Haiti ("Banque") for damages allegedly caused by Banque's negligence in handling stock certificates and drafts transmitted to it for collection by plaintiff's agent, The Hibernia National Bank ("Hibernia Bank"), also located in New Orleans. The stocks in question had been purchased by plaintiff for the account of two of its customers, Williams Investors and Whitkind Realty; it was at their instruction that plaintiff, on September 25, 1972, caused the stock certificates and drafts totalling \$628,434.64 to be sent by registered mail to defendant Banque for collection from one Paul Supart & Co.

The instructions contained in the collection letters accompanying the stock certificates and drafts directed the Banque to deliver them against payment by Paul Supart, the drawee, and to remit the proceeds by cable. The instructions further provided that in the event of nonpayment of the drafts, or delay in payment or acceptance, or dishonor

Opinion , Findings of Fact and
Conclusions of Law.

the Banque was to notify the Hibernia Bank promptly stating the reasons therefor.

The Banque received the documents and stock certificates on or about September 29, 1972; however, for reasons set forth hereafter, it never presented the drafts or received payment, nor did it notify the Hibernia Bank promptly of delay in payment or acceptance giving reasons therefor. The package containing the certificates and the drafts was returned to the Hibernia Bank on December 22, 1972, by which time the value of the shares was considerably lower than on the date when the Banque received them on September 29, 1972. The plaintiff, having been unable thereafter to collect payment from its customers, Williams Investors and Whitkind Realty, sold the securities at a loss, which it seeks to recover.

The evidence upon the trial established that on or about September 30, 1972, a day after the package containing the drafts and certificates arrived at the Banque, Banque sent it to the post office at Haiti for return to the Hibernia Bank. However, as the defendant itself acknowledges, "inexplicably, the Haitian Post Office did

Opinion, Findings of Fact and
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not return the package containing the certificates and drafts until on or about December 1, 1972, and then by steamship," and, as noted, the package was delivered to the Hibernia Bank three weeks later on December 22, 1972.

Prior thereto other events had occurred. The Hibernia Bank, not having heard from Banque, cabled it on October 2, 1972, requesting confirmation of the receipt of the documents and information as to whether they were paid. The Banque responded on October 11th by cable to the Hibernia Bank that the documents were "apparently not received to date." On October 17th Hibernia Bank again cabled Banque: "Please investigate again and cable results"; this was followed up on October 20th when the Hibernia Bank sent another cable to Banque: "As soon as you receive advise urgently by cable." On October 26th Hibernia Bank again cabled Banque requesting that it be advised by cable of the receipt or non-receipt of the documents. Finally, on October 31st Banque cabled Hibernia Bank that the documents had not been received to date. On November 16th, acting under the belief that the documents had been lost in the mails, and stating that "[o]ur post office has been unable to get a reply from the Post Office in Haiti," the Hibernia Bank sent duplicate

Opinion, Findings of Fact and
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copies of the collection letters to Banque, requesting Banque to assist it in tracing the package of documents and to complete mail loss affidavits. Hibernia Bank then followed up on November 20th with another cable requesting confirmation of its letter and of the Banque's intention to provide the mail loss affidavits. Still without word from the Banque on November 28th, a representative of the Hibernia Bank called an official at the Banque in Port-au-Prince, who apparently professed lack of knowledge of the matter, whereupon the representative of the Hibernia Bank on that day sent another letter to the Banque confirming their conversation and enclosing a copy of its November 16, 1972 letter and additional mail loss affidavits with a request they be completed and returned immediately.

At this point, in the beginning of December 1972, Banque officials for the first time conducted an investigation which, according to them, revealed that a mail clerk, believing the documents were sent to the Banque in error, since Supart was not known in Haiti, had delivered them to the post office for return to the sender on September 30th. The Banque's comptroller, who supervised the investigation,

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testified that the Collection Department was unaware of what the mail clerk had done with the documents. However, the Banque is responsible for the actions of its employees, whether employed in the Mail Department or in the Collection Department. Additionally, there is no explanation for the delay in answering Hibernia's cables and letters of inquiry, or for the misstatement that the documents apparently had not been received, or for failure to notify the Hibernia Bank promptly of nonpayment, no matter what the reason. A prompt inquiry would have disclosed the facts when the Hibernia Bank, on October 2, first requested confirmation of the receipt of documents, and thereafter when cable after cable was sent. The Banque clearly was negligent in the handling of the transaction; its acts and omissions to act were not only negligent, but misleading. Indeed, the Banque practically conceded its negligent conduct when on December 19th it cabled the Hibernia Bank that it had returned the documents "by error on September 30, 1972 thru the post office," added that "we are at your disposal for collecting" the items, and concluded with "apologies."

The parties are in agreement that the law of

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Haiti governs on the issue whether the conduct of defendant casts it in liability to plaintiff, and that two provisions of the Haitian Civil Code are applicable:

"Article 1168 - Any act by a person which causes prejudice to another, obliges said person through whose fault the prejudice occurs, to repair it."

"Article 1169 - Everyone is liable for the prejudice he has caused, not only through his act, but also through his carelessness or imprudence."

The parties also agree that "carelessness or imprudence" connotes the usual standards in determining negligent conduct.

The legal expert called by defendant acknowledged the applicability of these provisions to the issues at hand. However, without citation of authority, based upon a hypothetical question, he expressed the opinion that upon the facts both the plaintiff and defendant were negligent, and in consequence the defendant would not be held liable. He was of the view that the greater fault was with the plaintiff because it failed to furnish the address of the drawee. However, the determination of the fact issue is, of course, for the trier of the fact. I find

Opinion, Findings of Fact and
Conclusions of Law.

no basis upon which to hold that plaintiff was negligent in this transaction. The expert was voluble but far from impressive, and considering that he was counsel for defendant Banque, to whom he previously had given an opinion exonerating it from liability, he can hardly be considered an objective witness.

The defendant persists in its contention that plaintiff was also at fault, that plaintiff's contributory negligence was a proximate cause of its losses, and that plaintiff is therefore barred from recovery. Essentially, defendant's claim is that the plaintiff had failed to use due diligence to ascertain the essential facts pertaining to the principals of Williams Investors and Whitkind Realty; that these principals were engaged in fraudulent activities; and that the direction to present the drafts for payment by Paul Supart in Port-au-Prince, Haiti, was itself part of a fraudulent scheme, since Paul Supart either did not exist or had no place of business in Port-au-Prince. To support its claim that plaintiff was contributorily negligent, defendant contends that plaintiff, in connection with the Williams Investors and Whitkind Realty accounts, violated various rules and regulations:

Opinion, Findings of Fact and Conclusions
of Law.

SEC Rule 15b10-3, the "Suitability Rule"; Rule 405
of the New York Stock Exchange, the "Know Your Customer"
(2)
Rule; SEC Rule 15b10-4, which among other things re-
quires supervision of customer accounts; and sections
(3)
4(c)(2), (5) and (8) of Regulation T.

It is defendant's contention that if the plain-
tiff had used due care throughout its dealings with the
accounts in question, and had not violated the rules and
regulations referred to above, it never would have opened
the two accounts and never would have sent the drafts and
stock certificates to the defendant Banque for collection --
or, put another way, that plaintiff, through its own negli-
gence, set in motion a series of events which, in any event,
could only have resulted in a return of the certificates
and unpaid drafts. This defense must fail; it amounts to
no more than an argument that if the transaction had never
taken place there would have been no damages and no loss.

(1) 17 C.F.R. § 240.15b10-3.

(2) 17 C.F.R. § 240.15b10-4.

(3) 12 C.F.R. § 220.4(c)(2), (5) and (8).

Opinion, Findings of Fact and
Conclusions of Law.

From April to August, 1972, prior to the first purchase of securities involved in this action, plaintiff had purchased other securities for Williams Investors and Whitkind Realty in similar fashion on six or seven occasions. The only difference between those six or seven transactions and the instant transaction was that the drafts in the prior transactions were drawn upon and presented for payment to a drawee in Montreal, Canada. In each of those transactions payment was made in due course. The plaintiff's successful experience in the Canadian transactions justified it in accepting its customers' instructions in the instant transaction.

More importantly, however, even if the plaintiff can be said to have been negligent, either by virtue of a violation of a regulation or a violation of some independent duty, its negligence was not a proximate cause of the damages it seeks to recover in this lawsuit. It is inescapable that if the Banque had acted with due care and, following instructions, promptly notified the plaintiff of nonpayment and returned the securities, plaintiff would have been able to either obtain payment from its customers or, failing that, effect a sale of the securities to mitigate its damages. Not only did the Banque fail to follow the instructions in

Opinion, Findings of Fact and
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the collection letters, thereby violating its acknowledged practice of following instructions accompanying drafts, but it subsequently compounded its negligent conduct over a two and a half month period by failing to conduct a prompt investigation after the Hibernia Bank's repeated inquiries, and by misleading the Hibernia Bank and the plaintiff into believing that the Banque had not received the drafts and certificates.

It was this negligence on the Banque's part, not any alleged negligence of the plaintiff, that was the proximate or legal cause of the losses plaintiff seeks to recover. Assuming that plaintiff was negligent, such negligence could have been a proximate cause only of any loss representing the decrease in value in the securities from the time of their purchase to the time when they would have been returned by the Banque had it acted with due care, but plaintiff does not seek to recover this portion of its loss. The claim is confined to the decrease in the value of the securities during the period commencing with the Banque's failure promptly to notify plaintiff of nonpayment contrary to instructions, and ending on the date of the return of the securities; as to these losses the Banque's negligence

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was the sole proximate cause.

The alleged violations of the regulations referred to have been advanced by defendant under its plea of contributory negligence, which the court rejects. Upon the trial and in its post trial brief, the defendant apparently sought to expand its defense by claiming that the alleged violations of rules and regulations are an absolute bar to plaintiff's claim, regardless of whether they were a proximate cause of plaintiff's loss. Assuming that a violation by itself carries with it an absolute forfeiture of plaintiff's right to recovery against a third party like
(5) the defendant, the defendant's failure to plead this as
(6) an affirmative defense bars its consideration by the court.

(4) See generally Prosser, The Law of Torts § 44 at 281-86, § 52 at 317-320 (4th ed. 1971).

(5) The defendant has not pointed to any case in which any such defense was asserted by a third party. Nor has it offered any support for dispensing with the requirement of showing proximate cause as a part of any such defense. Indeed, the existence of such a requirement has support. *Irving Weis & Co. v. Offenberger*, 31 Misc.2d 628, 220 N.Y.S.2d 1001 (Sunn. Ct. 1961); *E.F. Hutton & Co. v. Weinberg*, [1961-64 Transfer Binder] CCH Fed. Sec. L. Rep. ¶91,332 (N.Y. Sup. Ct. 1964). Dispensing with the requirement would also run counter to the requirement of showing proximate cause as part of an affirmative action for damages for alleged violations of the securities laws. See VI Loss, Securities Regulation 3880-83 (1969); V Loss, supra, at 3301, 3307-08, III Loss, supra, at 1759 (1961).

(6) Fed. R. Civ. P. 8(c); see *Trio Process Corp. v. L. Goldstein's Sons, Inc.*, 461 F.2d 66, 74 (3d Cir.), cert. denied, 409

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Conclusions of Law

Plaintiff is entitled to recover damages based upon the difference between the value of the securities on the date the Banque received them plus a reasonable time for presentation for payment to the drawee and notification of nonpayment, in this instance, October 2, 1972, and their value upon the date they were received, December 22, 1972, when they could have been sold by plaintiff in the event its customers did not make payment.

The parties have agreed that the market value of the securities on October 2, 1972 was \$567,375, and that their value on December 22, 1972 was \$530,405, a difference of \$36,970, to which sum plaintiff is entitled to judgment together with interest.

In view of the fact that plaintiff has prevailed upon its claim, the defendant's counterclaim based upon the attachment heretofore granted is dismissed upon the merits.

footnote 6 cont'd

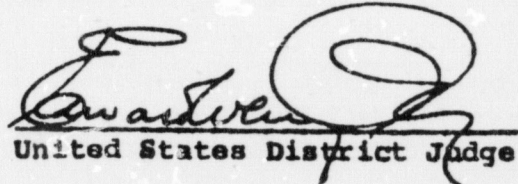
U.S. 997 (1972); Radio Corp. of America v. Radio Station KYPM, Inc., 424 F.2d 14, 17 (10th Cir. 1970); Roe v. Sears, Roebuck & Co., 132 F.2d 829, 832 (7th Cir. 1943); United States v. Commercial Union Ins. Group, 294 F. Supp. 768, 772 (S.D.N.Y. 1969).

15a

Opinion, Findings of Fact and
Conclusions of Law.

The foregoing shall constitute the Court's
Findings of Fact and Conclusions of Law.

Dated: New York, N. Y.
March 21, 1975


United States District Judge

Stipulation that Figures Represent Closing Prices
of Stocks.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

DORSEY & COMPANY, INC.,

Plaintiff,

73 Civ. 4069 (E.W.)

- against -

STIPULATION

BANQUE NATIONAL DE LA REPUBLIC
D'HAITI,

Defendant.

----- X

IT IS HEREBY STIPULATED AND AGREED by and between
the undersigned attorneys for the respective parties that
the following figures represent the closing prices of the
stocks in issue on the dates noted, except that for C & R
Clothiers, the figures are the closing bid prices on the days
in question.

	<u>9/29</u>	<u>12/22</u>
Teleprompter	37-1/8	33-7/8
Tokheim	23-3/4	22-7/8
Syntex	76-1/2	80
C & R Clothiers	18-1/4	14

Stipulation.

IT IS FURTHER STIPULATED AND AGREED that the following figures represent the market value of the stocks in issue on the dates noted:

	<u>9/29</u>	<u>12/22</u>
Teleprompter	\$445,500	\$406,680
Tokheim	59,375	57,225
Syntex	38,250	40,000
C & R Clothiers	<u>36,500</u>	<u>26,500</u>
Total	\$579,625	\$530,405

Dated, New York, N. Y.
February 28, 1975

Tenzer Greenblatt Fallon Kaplan
TENZER, GREENBLATT, FALLON & KAPLAN,
Attorneys for Plaintiff

s/ Lunny & Crocco.
LUNNEY & CROCCO,
Attorneys for Defendant

Judgment No. 75377, Granting Plaintiff
\$35,687.50 with Interest From October 2,
1972.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

x

DORSEY & COMPANY, INC.,

Plaintiff,

73 Civ. 4069 (EW)

-against-

BANQUE NATIONAL DE LA REPUBLIC
D'HAITI,

Defendant.

x

JUDGMENT # 75377

This action came on for trial before the Court,
Hon. Edward Weinfeld, District Judge, presiding, and the
issues having been duly tried, and a decision having been
duly rendered, it is

ORDERED AND ADJUDGED, that the plaintiff Dorsey &
Company, Inc. recover of the defendant Banque National de la
Republic D'Haiti the sum of \$35,687.50 with interest thereon, at
the rate of 6% as provided by law, from October 2, 1972,
together with its costs of action.

Dated: New York, New York

March 22, 1975

ENTERED

Edward Weinfeld, U.S.D.J.

MICROFILM

JUDGMENT ENTERED - 4/30/75

Raymond J. Bingham

19a

Plaintiff's Exhibit 11, Cabelgram by Defendant
to Hibernia National Bank dated
December 19, 1972.

MNR-1620

The Hibernia Nation
IN NEW ORLEANS

CABLEGRAM RECEIV

U. S. Dist. Court
S. D. of N. Y.

FROM		
BANQUE NATIONALE REP		
PORT AU PRINCE		
DATE CABLED	DATE RECEIVED	CODE USE
	12/19/72	
CODE WORDS		

attn john g robin asst. cashier

REYOUR LETTER NOV 28 REYOUR COLLECTIONS C126388
THRU C126396 WE CONFIRM PREVIOUS TELEPHONE
CONVERSATION OUR MR BONNEFIL WITH YOU STOP
YOUR DOCUMENTS RETURNED TO YOU BY ERROR ON
SEPTEMBER 30, 1972THRU POST OFFICE AND SHIPPED
TO YOU BY POST OFFICE BY REGISTERED STEAMER
MAIL DISPATCHED ON DECEMBER FIRST 1972 ON
BOARD SS SANTA CRUZ STOP PLEASE CABLE US AT
OUR EXPENSES WHEN RECEIVED AT YOUR END STOP
WE ARE AT YOUR DISPOSAL FOR COLLECTING ABOVE
ITEMS STOP APOLOGIES

INSULAIRE

yc

CHECKED

APPROVED

DATE: 1/17/75

PLF'S

DEPT'S EXH 11

ID. EVD

R. B.

Defendant's Exhibit A, Cashier or Delivery Copies
of Confirmation Forms Reflecting, Except for
500 Shares of C & R Clothiers, Orders Executed
by Plaintiff on Behalf of Whitkind and Tomarkin.

Dorsey and Company Incorporated

Investment Securities
1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-543

Transaction Date

8/17/72

Settlement Date

8/24/72

Maturity Date

WILLIAMS INVESTORS
240 E. 55th STREET
NEW YORK, NEW YORK

WE HAVE AS OF ABOVE DATE AS PRINCIPALS
☒ WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT			
500	C & R CLOTHIERS LU 510/12 712/13 F. V S P	18-1/8	\$9,062.50			
INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			133.56			\$9,196.06

are subject to the rules and customs
of the market where completed and to
the S.E.C. and N.A.S.D.

When acting as agent, we will furnish on the
date and hour and with whom the trans. was
completed.

The above securities are or may
be hypothecated under circum-
stances to permit the commingling
of them with securities of other
customers. Such commingling, if
any, ceases on payment by you
of the amount indicated hereon.

WE THAT U

Dorsey and Company By **RJV**

Incorporated

Incorporated

Exhibit A.

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-5400

Maturity Date

8/24/72

WILLIAMS INVESTORS
240 E. 55th STREET
NEW YORK, NEW YORK 10022

~~20~~ WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

transactions are subject to the rules and customs of the exchange or market where completed and to the regulations of the S.E.C. and N.A.S.D.

The above securities are or may hypothecated under circumstances to permit the commingling of with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon or the amount indicated hereon.

WE THANK ^{HAPPY}

Dorsey and Company By RJV

Incorporated
Lusky and Company By **RJV**
Incorporated

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-5431

Transaction Date

9/1/72

Settlement Date

9/11/72

Maturity Date

WHITKIND REALTY
847 LEXINGTON AVE.
NEW YORK, NEW YORK 10021

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

☒ WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT			
2000	TELEPROMPTER CORP. <i>15745.12</i>	40-5/8	\$81,250.00			
INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			567.00			\$81,817.00

Transactions are subject to the rules and customs of the exchange or market where completed and to the regulations of the S.E.C. and N.A.S.D.

As acting agent, we will furnish on request the date and our and with whom the transaction was completed.

The above securities are or may be hypothecated under circumstances to permit the commingling of with securities of other customers. Such commingling, in any, ceases on payment by you of the amount indicated hereon.

WE THAI DU

Dorsey and Company By **RJV**
Incorporated
Incorporated

23a

Exhibit A.

William S. Williams, Director, President
Investment Securities
 1017 BARRING BUILDING - NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 526-541

Invoice Date

1/11/72

Settlement Date

1/13/72

Maturity Date

WILLIAM S. WILLIAMS
1017 B. BARRING BUILDING
NEW ORLEANS, NEW YORK 10022

WE HAVE AS OF ABOVE DATE NO PRINCIPALS

WE HAVE AS OF ABOVE DATE NO AGENTS

BUYER FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
2,000	TELETYPE UNIT CORP.	37-1/2	\$75,000.00
			512.00
			\$75,512.00

Manufacturers are subject to the rules and regulations of the Federal Reserve Bank of New York and the Federal Reserve Bank of New York.

Manufacturers are subject to the rules and regulations of the Federal Reserve Bank of New York and the Federal Reserve Bank of New York.

The above quantities are a copy of the original order given to the manufacturer and are subject to the manufacturer's terms and conditions. The manufacturer's terms and conditions are subject to the manufacturer's terms and conditions.

NEW YORK

RJY

Drescher and Company, Inc.

Incorporated

New York

24a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-54

Transaction Date

Settlement Date

Maturity Date

8/21/72

8/28/72

WILLIAMS INVESTORS INC.
240 E. 55th STREET
NEW YORK, NEW YORK 10022

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT			
2000)	TELEPROMPTER CORP.	41-1/2	\$83,000.00			
D. D. S. R.						
INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			574.00			\$83,574.00

All transactions are subject to the rules and customs of the exchange or market where completed and to the SEC. and N.A.S.D.

When acting as agent, we will furnish on request the date and with whom the transaction was completed.

The above securities are or may be hypothecated under circumstances to permit the commingling thereof with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon.

WETHAN U

Dorsey and Company By **RJV**

Incorporated

Incorporated

25a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-540

Transaction Date

Settlement Date

Maturity Date

8/28/72

9/5/72

WILLIAMS INVESTORS
240 E. 55th STREET
NEW YORK, NEW YORK 10022

____ WE HAVE AS OF ABOVE DATE AS PRINCIPALS

☒ WE HAVE AS OF ABOVE DATE AS AGENTS**BOUGHT FOR YOUR ACCOUNT**

QUANTITY	DESCRIPTION	PRICE	AMOUNT			
2000	TELEPROMPTER CORP.	38-3/4	\$77,500.00			
INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			552.00			\$78,052.00

Transactions are subject to the rules and customs
 or exchange or market where completed and to
 regulations of the S.E.C. and N.A.S.D.

When acting as agent, we will furnish on request
 the date and with whom the transaction
 was completed.

The above securities are or may
 be hypothecated under circum-
 stances to permit the commingling
 of with securities of other
 customers. Such commingling, if
 any, ceases on payment by you
 of the amount indicated hereon.

or the amount indicated hereon.

WE TRUST, U

Dorsey and Company By **RIV**

Incorporated

Incorporated

26a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-542

Transaction Date

8/15/72

Settlement Date

8/22/72

Maturity Date

2 Years

WHITKIND REALTY
847 LEXINGTON AVE.
NEW YORK, NEW YORK 10021

WE HAVE AS OF ABOVE DATE AS PRINCIPALS
☒ WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT			
1000	TELEPROMPTER CORP.	41.00	\$41,000.00			
1000	" "	41-1/8	41,125.00			
1000	" "	41-1/4	41,250.00			
			<u>\$123,375.00</u>			
D.V.S.P.						
INTEREST	ACCUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			775.50			\$124,150.00

Transactions are subject to the rules and customs of the exchange or market where completed and to the rules of the S.E.C. and N.A.S.D. to the agent, we will furnish on the date and with whom the transaction was completed.

The above securities are or may be hypothecated under circumstances to permit the commingling of securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon.

WE THANK YOU

Dorsey and Company By **RJV**

Incorporated

Incorporated

27a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 52

Transaction Date

Settlement Date

Maturity Date

8/23/72

8/30/72

WILLIAMS INVESTORS
240 E. 55th STREET
NEW YORK, NEW YORK

____ WE HAVE AS OF ABOVE DATE AS PRINCIPALS

☒ WE HAVE AS OF ABOVE DATE AS AGENTS**BOUGHT FOR YOUR ACCOUNT**

QUANTITY	DESCRIPTION	PRICE	AMOUNT			
500	TOKHEIM CORP. <i>J. W. N.</i>	23-3/8	\$11,687.50			
INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			132.70			\$11,820.20

The transactions are subject to the rules and customs of the exchange or market where completed and to the regulations of the S.E.C. and N.A.S.D.

When the date of completion of the transaction is requested, we will furnish on request the name of our agent and with whom the transaction was made.

The above securities are or may be hypothecated under circumstances to permit the commingling of with securities of other customers. Such commingling, in any, ceases on payment by you of the amount indicated hereon.

of the amount indicated hereon.

WE THANK YOU

RJV

Dorsey and Company By

Incorporated

Incorporated

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-5431

Transaction Date

8/22/72

Settlement Date

8/29/72

Maturity Date

WHITKIND REALTY
847 LEXINGTON AVE.
NEW YORK, NEW YORK 10021

____ WE HAVE AS OF ABOVE DATE AS PRINCIPALS
☒ WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
500	TOKHEIM CORP. <		

All transactions are subject to the rules and customs of the exchange or market where completed and to regulations of the S.E.C. and N.A.S.D.

acting agent, we will furnish on best date or and with whom the transaction completed.

The above securities are or may be hypothecated under circumstances to permit commingling of with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon, or the amount indicated hereon.

WE THANK YOU

Dorsey and Company By *RJW*

Incorporated

Incorporated

Incorporated

29a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-541

Transaction Date

Settlement Date

Maturity Date

8/23/72

8/30/72

WILLIAMS INVESTORS
240 E. 55th STREET
NEW YORK, NEW YORK 10022

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

☒ WE HAVE AS OF ABOVE DATE AS AGENTS**BOUGHT FOR YOUR ACCOUNT**

QUANTITY	DESCRIPTION	PRICE	AMOUNT
500	TOKHEIM CORP. 		

These transactions are subject to the rules and customs of the exchange or market where completed and to the regulations of the S.E.C. and N.A.S.D.

When acting as agent, we will furnish on request the date and with whom the transaction was effected.

The above securities are or may be hypothecated under circumstances to permit the commingling of with securities of other customers. Such commingling, in any, ceases on payment by you of the amount indicated hereon.

WE THANK YOU

Dorsey and Company By

RJV

Incorporated
 Incorporated
 1012 HIBERNIA BUILDING

30a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-5431

Transaction Date

Settlement Date

Maturity Date

8/22/72

8/29/72

WILLIAMS INVESTORS
240 E. 55th STREET
NEW YORK, NEW YORK 10022

— WE HAVE AS OF ABOVE DATE AS PRINCIPALS

☒ WE HAVE AS OF ABOVE DATE AS AGENTS**BOUGHT FOR YOUR ACCOUNT**

QUANTITY	DESCRIPTION	PRICE	AMOUNT
500	TOKHEIM CORP.Q 		

All transactions are subject to the rules and customs of the exchange or market where completed and to regulations of the SEC. and NASD.

When acting as agent, we will furnish on request the date and with whom the transaction was effected.

The above securities are or may be hypothecated under circumstances to permit the commingling of with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon.

WETHAN, J.
 Dorsey and Company By

RJV

31a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-5431

Transaction Date

Settlement Date

Maturity Date

8/23/72

8/30/72

WILLIAMS INVESTORS
240 E. 55th STREET
NEW YORK, NEW YORK

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

☒ WE HAVE AS OF ABOVE DATE AS AGENTS**BOUGHT FOR YOUR ACCOUNT**

QUANTITY	DESCRIPTION	PRICE	AMOUNT			
200	TOKHEIM CORP.	23-1/4	\$4,650.00			
53.08						
IF.	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			53.08			\$4,703.08

All transactions of the exchange are subject to the regulations of the S.E.C. and N.A.S.D. When acting as agent, we will furnish on request the date of the transaction and with whom the transaction was made.

The above securities are or may be hypothecated under circumstances which permit the commingling of securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon.

WETHAN J

Dorsey and Company By

Incorporated
Incorporated

RJV

Exhibit A.

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-5431

Maturity Date

9/18/72

WILLIAMS INVESTORS INC.
240 E. 55th STREET
NEW YORK, N.Y. 10022

WE HAVE AS OF ABOVE DATE AS PRINCIPALS
 WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FROM YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
300	TOKHEIM CORP. P.D.S. B	22-1/2	\$6,750.00
INTEREST	ACCRUED FROM	TO	COMMISSION
			TAXES
			HANDLING
			AMOUNT DUE
			100.75
			\$6,850.75

All of these are subject to the rules and customs of the regulation or market where completed and to the S.E.C. and N.A.S.D.

When ^{into} agent, we will furnish on request
the ^{and} ^{and} with whom the transaction
completed

The above securities are or may be hypothecated under circumstances to permit the commingling of with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated.

WE THANK YOU

Dorsey and Company By
Incorporated

RJV

33a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-540

Transaction Date

8/15/72

Settlement Date

8/22/72

Maturity Date

WHITKIND REALTY
847 LEXINGTON AVE.
NEW YORK, NEW YORK 10021

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

☒ WE HAVE AS OF ABOVE DATE AS AGENTS**BOUGHT FOR YOUR ACCOUNT**

QUANTITY	DESCRIPTION	PRICE	AMOUNT			
500	SYNTEX CORP. D. V. S. P.	99-1/2	\$49,750.00			
INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			325.00			\$50,075.00

If transactions are subject to the rules and customs of the exchange or market where completed and to the rules of the S.E.C. and N.A.S.D.
 When date of completion of transaction is requested, we will furnish on request the date of completion and with whom the transaction was completed.

The above securities are or may be hypothecated under circumstances to permit the commingling of securities of other customers. Such commingling, in any case, ceases on payment by you of the amount indicated hereon.

WE THANK YOU

Dorsey and Company By **RJV**
 Incorporated

34a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-543

Transaction Date

Settlement Date

Maturity Date

8/15/72

8/22/72

WHITKIND REALTY
848 LEXINGTON AVE.
NEW YORK, NEW YORK 10021

— WE HAVE AS OF ABOVE DATE AS PRINCIPALS
☒ WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT			
400	C & R CLOTHIERS J. U. S. P.	17.00	\$6,800.00			
INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			107.20			\$6,907.20

All transactions are subject to the rules and customs of the exchange or market where completed and to regulations of the S.E.C. and N.A.S.D.

When acting as agent, we will furnish on request the details of our agreement with whom the transaction is completed.

The above securities are or may be hypothecated under circumstances to permit the commingling of such securities with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon.

WE THANK YOU

Dorsey and Company By

BJV

Incorporated

35a

Exhibit A.

Dorsey and Company Incorporated*Investment Securities*

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-543

Transaction Date

8/15/72

Settlement Date

8/22/72

Maturity Date

WHITKIND REALTY
847 LEXINGTON AVE.
NEW YORK, NEW YORK 10021

____ WE HAVE AS OF ABOVE DATE AS PRINCIPALS

☒ WE HAVE AS OF ABOVE DATE AS AGENTS**BOUGHT FOR YOUR ACCOUNT**

QUANTITY	DESCRIPTION	PRICE	AMOUNT
300	C & R CLOTHIERS D.V.S.P.	17-1/4	\$5,175.00

INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			86.58			\$5,261.58

are subject to the rules and customs
of the S.E.C. and N.A.S.D.

When acting as agent, we will furnish on
the day and with whom the transfer is
made.

The above securities are or may
be hypothecated under circum-
stances to permit the commingling
of with securities of other
customers. Such commingling,
any, ceases on payment by
of the amount indicated here-
of the amount indicated here.

WE THAN U

Dorsey and Company By

BJV

Incorporated

Incorporated

36a

Exhibit A.

Dorsey and Company Incorporated

Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

TELEPHONE (504) 524-543

Transaction Date

8/15/72

Settlement Date

8/22/72

Maturity Date

WHITKIND REALTY
847 LEXINGTON AVE.
NEW YORK, NEW YORK 10021

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

☒ WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT			
300	C & R CLOTHIERS	17-1/4	\$5,175.00			
D U S. P.						
INTEREST	ACCRUED FROM	TO	COMMISSION	TAXES	HANDLING	AMOUNT DUE
			86.58			\$5,261.58

The above securities are or may be hypothecated under circumstances to permit the commingling of such securities of other securities. Such commingling, in no way affects the payment by the issuer of the amount indicated hereon.

WE THANK YOU
Dorsey and Company By RJV
Incorporated

When the date of the regulations of the exchange or the date of the order was entered.

agent, with whom the transaction was effected, and with whom the transaction was effected.

37a

Exhibit A.

Dorsey and Company Incorporated
Investment Securities

1012 HIBERNIA BUILDING • NEW ORLEANS, LOUISIANA 70112

Transaction Date

8/17/72

Settlement Date

8/24/72

Maturity Date

WILLIAMS INVESTORS
240 E. 55th STREET
NEW YORK, NEW YORK

WE HAVE AS OF ABOVE DATE AS PRINCIPALS

☒ WE HAVE AS OF ABOVE DATE AS AGENTS

BOUGHT FOR YOUR ACCOUNT

QUANTITY	DESCRIPTION	PRICE	AMOUNT
500	C & R CLOTHIERS	17-7/8	\$8,037.50
INTEREST	ACCRUED FEE	TO	COMMISSION
			132.44
		TAXES	
		HANDLING	AMOUNT DUE
			\$9,069.94

All transactions are subject to the rules and customs of the exchange or market where completed and to regulations of the S.E.C. and N.A.S.D.

When acting as agent, we will furnish on request the date and hour and with whom the transaction was completed.

The above securities are or may be hypothecated under circumstances to permit the commingling of with securities of other customers. Such commingling, if any, ceases on payment by you of the amount indicated hereon.

WETHAN J
Dorsey and Company By RJV
Incorporated

Defendant's Exhibit C, Notice of Decision of a Complaint against
Plaintiff by Business District No. 5 of the National
Association of Securities Dealers.

BEFORE THE BOARD OF GOVERNORS

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of	:	
	:	
District Business Conduct Committee	:	
For District No. 5	:	
	:	
Complainant	:	<u>DECISION</u>
	:	
vs.	:	
	:	<u>Complaint No. N-217</u>
Dorsey & Company, Inc.	:	
1012 Hibernia National Bank Building	:	<u>District No. 5</u>
New Orleans, Louisiana 70112	:	
	:	
and	:	September 27, 1974
	:	
George P. Dorsey, President	:	
Robert J. Vedros, Secretary-Treasurer	:	
	:	
Respondents	:	

This matter was appealed to the Board of Governors pursuant to the provisions of Section 15 of the Association's Code of Procedure for Handling Trade Practice Complaints. In its Decision dated February 28, 1974, District Business Conduct Committee for District No. 5 censured respondent Dorsey & Company, Inc., a member, New Orleans, Louisiana, and suspended it from membership in the Association for a period of five days, censured respondents George P. Dorsey and Robert J. Vedros, registered principals, and suspended each from association with any member of the Association in any capacity for a period of five days. In addition, respondent member and the individual respondents were, jointly and severally, assessed costs of the proceedings in the amount of \$924.36.

The District Committee found that the individual respondents, acting through the member, had submitted an inaccurate and misleading 17a-10 Report for the year ending December 31, 1972, and had submitted false and misleading Form M and Form Q Reports for the month end periods from February through June, 1973. The Committee further

Exhibit C.

- 2 -

found that respondents' conduct constituted violations of Article III, Sections 1 and 21(a) of the Association's Rules of Fair Practice and was inconsistent with just and equitable principles of trade. The Committee also dismissed allegations that the respondents' conduct involved the use of manipulative, deceptive or fraudulent devices in contravention of Article III, Section 18 of the Rules of Fair Practice.

The Decision was appealed by all respondents on March 13, 1974. Subsequently, on April 25, 1974, a hearing was held in the Association's office in Kansas City, Missouri. Respondents Dorsey and Vedros appeared and were represented by counsel who also represented the interests of the respondent member.

At the hearing respondents' counsel admitted the violations but stated that respondents felt the penalties were basically unfair and not commensurate with the gravity of the violations. He stated that the member's violations were not the result of any intent to mislead or deceive the regulatory authorities but were the result of mere inadvertence. He stated that respondents' conduct does not justify a suspension but a censure and a fine were more appropriate penalties. Counsel further contended that he believed that respondent's prior disciplinary history had unduly prejudiced the members of the District Committee against him. He also contended that a review of their disciplinary history could lead one to fairly conclude that the member had been an object of persecution by the staff and committee of District No. 5. He reviewed what he contended to be the hostile attitude of the District Committee during the District hearing. He also contended that the staff of the District placed more emphasis upon reviewing the member's books and records to find violations upon which to initiate a complaint than they did upon helping the member to remedy its errors which counsel felt was the proper function of the Association. Further, in reviewing the history of disciplinary actions involving the member respondents' counsel stated that the letters of caution and the five formal complaint actions dating from 1960 through 1973 reflected only two serious violations: net capital violations in 1967 and Regulation T violations in 1973. With regard to the former, counsel contended that the violations were merely technical in nature and that at no time was there any risk to the public. With regard to the latter, counsel contended that the practice for which the member was found in violation of Regulation T was common throughout District No. 5 and the industry as a whole, that the Association was aware of this practice and that respondents in effect had been made an object lesson.

With regard to the inaccurate and late filing of the 17a-10 Report for 1972, respondents stated that they encountered difficulties in calculating the required information because the member's fiscal year ends on

Exhibit C.

- 3 -

June 30 rather than December 31 and the process used to extract the calendar year figures left a margin for error. Respondents stated that after the Association had indicated there were errors on the calculations as reported, they immediately conferred at length with both the Washington and District Offices to determine the extent and reason for the miscalculations. Respondents stated that after these discussions the 17a-10 form was amended and refiled giving the same treatment to the Williams account as it had received when the 17a-10 was initially filed. Although respondents did not defend and did admit the inaccuracies which appeared on the original 17a-10 Report, they stated that their amended form 17a-10 did not necessitate any changes to the entries on the member's books and records. While admitting the inaccuracies, respondents contended, in mitigation, that there was never any intention on the part of the member or its principals to mislead the Association, that the inaccuracy was the result of misapplication and miscalculation of information appearing on the member's books and records and that their errors did not represent any failure to understand the Association's rules and regulations. Further, respondents stated that at no time during the course of these proceedings was there any allegation of a violation of the net capital rule. In addition, respondents stated that the fact that there was no deliberate deception should be apparent in view of the District Committee's dismissal of allegations of a Section 18 violation. With regard to the member's future submission of regulatory forms, respondents stated that all forms would henceforth be drafted and prepared by accountants prior to being reviewed and forwarded to the Association by the member. In addition, according to respondent Vedros and contrary to the phraseology of the District Decision, the member filed Forms M and Q with the Association in a timely manner. However, respondent Vedros did admit that the member had filed the 17a-10 Report late and that this form was requested by the Association prior to its submission by the member.

With regard to the Form Q violations, the respondents stated that the member is willing to admit that it possibly submitted inaccurate forms. However, the respondents objected to the fact that the amended Form Q which was changed as a result of the Williams account transaction following a discussion with the Association's staff resulted in the issuance of a complaint based upon information brought forth during these discussions. Further, although the respondents admitted that there was some dispute between themselves and the District Committee over the proper treatment of the Williams account, they contended that whether the Williams account was treated as an unsecured receivable or as a customer receivable for net capital computations, there would not have been a net capital violation in either case. With regard to the circumstances surrounding the treatment of the Williams account, respondent Dorsey stated that at the time of the violations he had been doing business with the account for approximately

Exhibit C.

- 4 -

one year. He stated that when the securities drafted for collection became lost the bank placed a tracer on the securities and when the bank could still not locate the securities, the member made an immediate claim against the bank so that it could proceed if necessary against the bank's insurers instead of against its own insurer. Respondent Dorsey stated that the member also filed a claim to have the securities reissued and instituted stop-payment procedures with the transfer agent. He stated that the securities were ultimately found four months after they became lost. Respondent Dorsey stated that during the period when the securities were lost the member treated the securities as customer receivable for purpose of net capital computations since the customer continued to indicate that he still wanted the stock. Further, he stated that the bank had seven days in which to cover the transaction. Respondent Dorsey stated that when the customer finally indicated that he could not and would not pay for the securities they were promptly liquidated by the member. Respondent Vedros stated that the member in computing its net capital in this matter had always considered the possibility of an unrealized loss on the securities which were lost.

With regard to the violations concerning Form M submissions, the respondents stated that Form M was not false and misleading since its contents were fully discussed with the Association's staff and there was no attempt to withhold information or deceive the Association in any way.

In concluding their testimony, respondents stated that they were not contending that they had treated the Williams account accurately nor that they had accurately filed Forms M, Q and 17a-10, but stated that, under the circumstances, they believed that a censure and a \$500 fine would be a more appropriate penalty. Respondents contended that they were not shift or devious and that they were indeed a credit to the industry. Respondents again stated that although the forms they are required to complete and submit to the Association are complicated, the errors in the forms they submitted were inadvertent and not made with any intention to deceive the Association. In addition, respondents stated that since this complaint was initiated the Securities and Exchange Commission has examined the member's books and records and has found no problems with its operations. In summary, the respondents stated that they did not believe that a five day suspension with its resultant publicity is justified by the facts here present, particularly since in the future accountants will be employed to complete all forms submitted to regulatory agencies by the member. In addition, counsel for the respondents stated that respondent Dorsey is aware of the fact that he is personally responsible for all actions of respondent Vedros and, consequently, is continually over-seeing respondent Vedros' activities.

Exhibit C.

- 5 -

We have reviewed the record in its entirety and we can find no basis for altering or modifying the findings of the District Committee. Accordingly, such findings are hereby affirmed. However, we believe that some modification of the penalties is in order. In reaching this conclusion we have carefully weighed the testimony of respondents. We note that respondents have admitted that they have improperly and inaccurately completed Forms M, Q and 17a-10 submitted by them to the Association. However, we believe that the improper 17a-10 calculations were the result of an inadvertent error and were most probably not the result of any intention to deceive the Association. We have also noted that despite the improper calculations and the treatment given the Williams account for net capital computation purposes, the member would not in any case have been placed in net capital deficiency. Under the circumstances, while we do not in any way condone the submission by the respondents of inaccurate information to the Association, we do not believe that the public interest or our regulatory responsibilities necessitate suspensions. Nevertheless, we believe the violations were serious and warrant the imposition of a substantial fine. Consequently, we hereby reduce the penalties imposed by the District Committee from censure and suspension of each respondent for a period of five days to censure of each respondent and a fine in the amount of \$5,000 upon respondents, jointly and severally. In addition, we affirm costs of the proceedings assessed by the District Committee as to all respondents.

On Behalf of the Board of Governors,

By

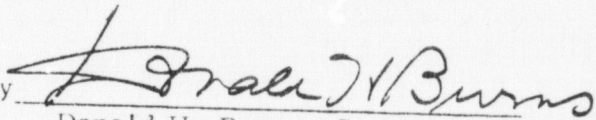

Donald H. Burns, Secretary

Exhibit C.

BEFC THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
DISTRICT BUSINESS CONDUCT COMMITTEE NO. 5

.....
In the Matter of
District Business Conduct Committee
For District No. 5

COMPLAINANT

vs.

Dorsey & Company, Inc. - MEMBER
1012 Hibernia National Bank Building
New Orleans, Louisiana 70112
and
George P. Dorsey, President
Robert J. Vedros, Secretary-Treasurer

RESPONDENTS
.....

D E C I S I O N

Complaint No. N-217

February 28, 1974

This Complaint was filed by the District Business Conduct Committee for District No. 5 of the National Association of Securities Dealers, Inc., on September 13, 1973, and named as Respondents, Dorsey & Company, Inc., Member and George P. Dorsey and Robert J. Vedros, Registered Principals. The Complaint resulted from the Committee's review of the report of a special examination of the Respondent Member's books and records which was conducted by a representative of this Committee during May 1973 and from information gathered during the course of a staff conference with the Respondents on July 13, 1973. The Complaint, in three (3) separate causes of action, charges separate and distinct violations of Sections 1, 18 and 21(a) of Article III of the Rules of Fair Practice.

The Respondents, on September 23, 1973, submitted a common written Answer to the Committee's charges and requested a hearing in the matter. However, on October 3, 1973, Respondent Vedros, writing on behalf of the Respondents, advised the Committee that although they had previously submitted the subject written Answer, it was now their intention, at a later date, to submit a formal Offer of Settlement. Not having received such an Offer, the Committee, on its own motion on November 5, 1973, set the matter down for hearing. The hearing was conducted in the Association's District No. 5 office, commencing at 10:00 a.m. on Friday, November 30, 1973 before a sub-Committee consisting of seven of the nine members of the District

Exhibit C.

Business Conduct Committee as then constituted. Respondents George P. Dorsey and Robert J. Vedros appeared on their own behalf and that of the Respondent Member. All Respondents were represented by counsel.

One hour prior to that time, the Respondents, with counsel, appeared before the hearing sub-Committee and orally submitted a joint Offer of Settlement which imposed a penalty of censure and monetary fine of \$500. Thereafter, the sub-Committee, during a closed session, considered the Offer and unanimously determined that it was unacceptable, and so advised the Respondents and their counsel, all of whom thereupon requested that the hearing proceed as scheduled.

The District Business Conduct Committee, after review and consideration of the entire written record in this proceeding, has adopted the following Decision:

RESPONDENT'S BACKGROUND

Dorsey & Company, Inc. became an Association Member on June 22, 1959. The Member, as of the November 1973, date of hearing, employed nine (9) persons, two (2) of whom were registered with the Association as registered representatives and the two individually named Respondents as Principals. It maintains no branch offices and conducts a general securities business with primary emphasis on the retailing of corporate and municipal bonds.

Respondent George P. Dorsey is President, majority stockholder, and the chief operating head of Dorsey & Company, Inc., and is registered with the Association as a Principal. His background in the field of securities dates back approximately 27 years.

Respondent Robert J. Vedros is Secretary-Treasurer, one (1) of two (2) minority stockholders of the Respondent Member, and is registered with the Association as a Principal. His background in the field of securities dates back approximately 11 years, to when he first became associated with the Respondent Member.

The Respondent Member, prior to the instant proceeding, has been the subject of a number of letters of caution and at least five (5) formal complaint actions, N-34, N-82, N-130, N-134 and N-199,

Exhibit C.

by this Committee, as then constituted. Respondent George P. Dorsey was named a Respondent in each of the five separate actions while Respondent Vedros was named a Respondent in only the last three styled actions.

An analysis of those actions reveals the following facts:

Complaint No. N-34 (1960)

The Member and Respondent Dorsey, each separately, were found to have violated Regulation T--Section 4(c)(2) in connection with 67 separate transactions out of 450 transactions under review. As a result of such findings they were censured and fined \$1,000., which penalty was affirmed by the Board of Governors upon review.

Complaint No. N-82 (1962)

The Member and Respondent Dorsey, each separately, were found to have violated Regulation T--Sections 4(c)(2) and 4(c)(8), in connection with twenty-nine (29) separate transactions; failure to give timely notification to another Member of the Association of an account carried by the Member in the name of a registered representative of the other Member; failure to evidence approval by written endorsement on certain copies of the firm's order memoranda; and failure to comply with the SEC's record-keeping rule in that during an approximate two year period, its books and records were not proper nor kept on a current basis. Those findings resulted in a censure and a monetary fine in the amount of \$1500. plus costs against the Respondents. The penalty in connection with that matter was left undisturbed by the Board of Governors upon its review of the matter.

Complaint Nos. N-130 and N-134 (1967)

In a consolidated Decision, the Committee, as then constituted, found violations against the Member and Respondents Dorsey and Vedros, each separately, of the Securities and Exchange Commission's Net Capital Rule as of each month-end date in the period from April 30, 1966 through August 31, 1966 and also on October 31, 1966. Specifically, that Committee found that at the end of each month the Member's adjusted net capital was a deficit figure with the amount of the deficits ranging as high as \$203,928.80 on May 31, 1966. According to the Committee's findings the amount of additional capital needed to be in compliance with the net capital rule ranged from a high of about \$240,000. on May 31, 1966 to a low of about \$43,000. on October 31, 1966.

Exhibit C.

The Committee also found improper hypothecation of customers' fully paid securities; failure to keep proper books and records; filing of an inaccurate amendment to the Member's application for membership in the Association, and failure to act promptly to file a corrected amendment after notice of the inaccuracies; failure in certain instances to include on customer statements a "free credit balance" legend; failure to give timely notification to another member of the Association of an account carried by the Member in the name of a registered representative of the other Member; and failure in certain instances to send proper "third market" confirmations. The Committee's Decision suspending the Member from membership in the Association for eighteen months and likewise the registration of Respondents Dorsey and Vedros for an eighteen month period, plus monetary penalties, for the Respondents totaling some \$4,500. was appealed by all Respondents to the Board of Governors. In its subsequent Decision it affirmed all findings of rule violations as well as the fines and costs imposed by the District Committee but modified the penalties by reducing the penalties of suspension imposed by the District Committee to suspension for thirty days as to all Respondents. In that connection, the record shows that the 30-day suspension for the firm and Respondent Vedros commenced with the opening of business January 6, 1969 and concluded at the close of business February 4, 1969. The 30-day suspension of Respondent Dorsey commenced with the opening of business February 5, 1969 and concluded at the close of business March 6, 1969.

Complaint No. N-199 (1973)

The Member and Respondents Dorsey and Vedros, each separately, were found to have violated Regulation T, Sections 4(c)(2); 4(c)(5) and 4(c)(8) in connection with 52 separate transactions and the SEC's record-keeping rule for their failure to prepare and maintain the firm's books and records in the manner and detail required by that rule in that they recorded at least 31 separate transactions to its various books and records in a manner that reflected executions on dates other than the actual dates on which the transactions were executed. The penalty imposed in connection with that matter consisting of censure and a monetary fine of \$10,000. plus costs in excess of \$1,000. was left undisturbed by the Board of Governors upon its review of the matter.

Exhibit C.

SUMMARY OF COMPLAINT AND ANSWERThe Complaint

The Complaint, in three (3) separate causes of action, charges the Respondents, each separately, with separate and distinct violations of certain sections of Article III of the Rules of Fair Practice, summarized as follows:

FIRST CAUSE: Alleges separate and distinct violations of Sections 1 and 21(a) by the Respondents, each separately, when on or about May 30, 1973, the Respondent Member, acting through Respondents Dorsey and Vedros, completed and submitted to the Association, at its request, the firm's Form 17A-10 which detailed thereon the Respondent Member's annual report of income and expenses for the calendar year of 1972, which report was inaccurate and misleading.

SECOND CAUSE: Alleges separate and distinct violations of Sections 1, 18 and 21(a) by the Respondents, each separately, when on or about March 20, 1973, and on or about June 29, 1973, respectively, the Respondent Member, acting through Respondents Dorsey and Vedros, completed and submitted to the Association, at its request, the firm's Forms "Q," which detailed thereon the Respondent Member's financial conditions, as at the month-end February and May 1973, respectively, including computation of its net capital and aggregate indebtedness, completed in accordance with Securities and Exchange Commission Rule 15c3-1 which filings were false and misleading.

THIRD CAUSE: Alleges separate and distinct violations of Sections 1, 18 and 21(a) by the Respondents, each separately, when during the period from on or about March 12, 1973, through on or about July 11, 1973, the Respondent Member, acting through Respondents Dorsey and Vedros, completed and submitted to the Association, at its request, the firm's Form "M" which reflected the firm's financial conditions as at the month-end February through June 1973, which filings also were false and misleading.

The Answer

With respect to the allegations contained in the first cause of complaint, the Respondents contend that the inaccurate filing of the firm's Form 17A-10 can be directly associated to the fact that the fiscal year of the Respondent Member ends on June 30th, therefore, the figures reported to the Association were obtained by using the figures as of December 31st of the current fiscal year to

Exhibit C.

which they added the figures for the end of the previous fiscal year (June 30th) and then deducted those figures for the first half of that prior fiscal year. This procedure, they claim, is complex, therefore the margin for miscalculation is increased.

Commenting with respect to the allegations contained in the second and third causes of complaint, the Respondents contend that the major difference of the figures in question as reported to the Association on Forms "Q" and "M" is simply in the application by the firm, of certain unsecured receivables. They claim if there were any variations in the figures filed, it was due to a lack of understanding and/or a lack of knowledge by the firm in connection with the submission of the reports, but in no event were such figures meant to be misleading because the supporting data maintained by the firm is the final evidence.

Finally, in mitigation, the Respondents argue that in the past, all of the firm's reports have been filed by only one person (Respondent Vedros), thus not any was ever "cross checked" by any other individual. As a result of this complaint, however, they claim, the firm has immediately instituted certain procedures and/or measures whereby in the future all reports filed by the firm will be under the direct supervision of its auditors, who in the meantime, have fully discussed this proposal with certain members of the Association's District staff.

FACTS, FINDINGS AND CONCLUSIONSInaccurate and Misleading Form 17A-10

(First Cause)

SEC Rule 17a-10 under the Securities Exchange Act of 1934 provides, among other things, for the annual income and expense reports of Exchange Members and broker-dealers to be filed with the Commission or with a registered self-regulatory organization (NASD) which will transmit the reports to the Commission. The major purpose of the report is to provide needed comprehensive financial data on a continuing basis so that up-to-date information will be readily available to the Commission, the national securities exchanges and to the Association in connection with the performance of their respective responsibilities. Accordingly, every Member of a national securities exchange and every broker or dealer

Exhibit C.

registered pursuant to Section 15 of the Act shall no later than 120^{1/} days after the close of each calendar year (commencing with the calendar year 1969), file a report of his income and expenses and related financial and other information for such calendar year on Form X-17A-10.

The record shows that on or about May 10, 1973, when the Association's Executive Office had failed to receive the Respondent firm's 17A-10 report for calendar year 1972, (due on March 31, 1973), that office transmitted, in writing, a notice addressed to Dorsey & Company, Inc. to that effect. Upon receiving that notice, the member thereafter advised the Executive Office that it had failed to receive the proper forms, consequently, it was unable to comply with the filing requirements outlined in such notice. Because of that advice, the Executive Office immediately thereafter placed into the mails to the Member several copies of the subject form. According to the record, after having received such forms, the Respondents completed at least one copy and on or about May 30, 1973, they submitted, to the Executive Office, that copy which detailed thereon the firm's annual report of income and expenses for the calendar year 1972.

On or about June 28, 1973, according to the record, the Executive Office, by telephonic means, notified staff representatives of this Committee that upon reviewing the 17A-10 report filed by the Member it had determined that the report, as filed, was inaccurate because the figures appearing in the "Capital Funds Section" of the report appeared to be out-of-balance. The record in this respect shows that immediately thereafter, as a result of that call, representatives of this Committee informed the firm's principals that certain inaccuracies appeared to exist on the 17A-10 report they had previously filed. The record further shows that a conference between the Respondents and a staff examiner was thereafter held in the Member's office which culminated in its filing an amended 17A-10 form with the Association on or about July 9, 1973.

^{1/} The NASD's plan provides that members of the Association will be required to file NASD Form 17A-10 with the Association no later than March 31st of each year subsequent to 1969.

Exhibit C.

The first Cause of Complaint alleges that on or about May 30, 1973, when the Respondent Member, acting through Respondents Dorsey and Vedros, completed and submitted to the Association, at its request, the firm's Form 17A-10 containing details thereon with respect to the Member's annual report of income and expenses for the calendar year of 1972, which contained figures in the "Capital Funds Section" of said report that did not balance, it did so knowing full well that such report was inaccurate and misleading for the reasons more fully detailed on exhibit "A" attached to the Complaint and to this Decision.

The Respondents, both in their written Answer and at the hearing, admit that such report, as originally filed with the Association on or about May 30, 1973, was inaccurate for the reasons detailed on the designated Exhibit but, in mitigation, they contend that such inaccuracies or errors could be directly associated to the fact that the fiscal year of Dorsey & Company, Inc. ends on June 30th, therefore, the figures they reported to the Association, in this connection, were obtained by using the figures appearing on the firm's books and records, as of December 31st of the current fiscal year to which they added the figures for the end of the firm's previous fiscal year (June 30th) and then deducted from that amount those figures for the first half of that prior fiscal year. This procedure, they claim, is a complex one, hence, the margin for miscalculation, or error, is very greatly increased. Too, they contend, in mitigation, that for a long, long while all reports filed by the firm with the NASD and other regulatory agencies have been prepared exclusively by Respondent Vedros without the benefit of review or cross-check by anyone else in the firm. This fact, they further claim, adds still another measure of chance for miscalculation or error.

Accordingly, we find that such acts, practices and conduct constitute separate and distinct violations of Sections 1 and 21(a) of Article III of the Rules of Fair Practice by the Respondent Member, Dorsey & Company, Inc., and George P. Dorsey and Robert J. Vedros, the individuals responsible for the acts of the Respondent Member, each separately, as alleged in the first Cause of Complaint. We further find such conduct to be inconsistent with just and equitable principles of trade.

Exhibit C.

False and Misleading Forms "Q",
(Second Cause)

The Board of Governors in May 1970, adopted a resolution requiring members of the Association to file quarterly financial reports. The purposes of the report are twofold: (a) to provide the Association with an "early-warning system" for detecting an impending critical financial situation in a given firm; and (b) to furnish current data relating to the economic stability and growth of the industry. Form "Q" must be executed and filed with the Association four (4) times each year by every Member of the Association.

The record shows, and it is alleged in this Second Cause of Complaint, that on or about March 20, 1973, and on or about June 2, 1973, respectively, Dorsey & Company, Inc., acting through its two principal officers, Respondents Dorsey and Vedros, completed and submitted to the Association, at its request, the firm's Forms "Q", which forms detailed thereon the Respondent firm's financial condition as at month-end February and May 1973, respectively, including computations of its net capital and aggregate indebtedness, completed in accordance with SEC Rule 15c3-1, which separate filings were false and misleading for the reasons more fully detailed on Amended Exhibits "B" and "C" attached to the Complaint and to this Decision.

The Respondents, both in their written Answer and at the hearing, claim that the major difference between the figures submitted to the Association in connection with these particular reports and those figures verified by the Association's examiner during the course of his review of the firm's books and records subsequently thereafter, rests solely in the way certain receivables (recorded on the firm's books and records during the periods under question), are treated by the Association's staff and this Committee. If there are any variations in the figures filed by the firm in connection with those separate reports and those figures compiled by the examiner during his review, that variation, they claim, is entirely due either to a lack of understanding or to a lack of knowledge on their part, as to the proper treatment of such items for purposes of the SEC's Net Capital Rule. In any event, they further contend, whatever the variations may be when comparing the two sets of figures, it certainly was never their intention to mislead the Association in any way whatsoever, since at all times, the supporting data for these reported figures was correctly recorded on its books and records, and that was the final evidence.

Exhibit C.

As previously noted, amended Exhibits "B" and "C" attached hereto more fully detail the facts with respect to the charges embodied in this Cause of Complaint. In this connection the record shows that prior to the hearing in this matter, a representative of this Committee, on November 21, 1973, hand-delivered, to the Respondents, these two separate exhibits designated as "Amended Exhibits "B" and "C", which documents had been prepared by the staff in early November 1973, at our instructions, when we reviewed the subject Complaint and made the determination to set the matter down for a hearing.

We have considered and rejected the Respondents contention that the alleged inaccurate and misleading filings of the firm's Forms Q, on two separate occasions, here under question, arose due to their unfamiliarity with the Association's method of treating certain receivables which may appear on a member's financial statement. The test of admissability of assets, the Respondents must certainly know, is not the intrinsic value of the particular item, but rather whether or not such item is immediately convertible into cash.

The major item at issue in the instant proceeding concerns an item classified by the Member as a so-called receivable which developed as a result of the purchase by its account Williams Investors of certain securities amounting to approximately \$342,000 in a payment vs. delivery account set up and maintained for that purpose on the firm's books and records. Those transactions, according to the record, were executed by the firm for that account during the period from on or about August 17, 1972 through on or about September 11, 1972, and in that connection, according to the record, the account ultimately regened on the contract, thereby causing losses to the firm amounting to \$214,000.

According to testimony of the Respondents, during the course of the hearing, the securities (7,000 shares Teleprompter; 1,000 shares C & R Clothiers, and 2,000 shares of Tokheim) were drafted for collection by the firm's local bank to the Williams account in a single item on or about September 25, 1972. Soon thereafter, they have testified, it was learned by a telephone call from their bank on or about September 29, 1972 that the securities were lost through its drafting procedures. As a result of that notice, they said the firm immediately

Exhibit C.

made a general journal entry cancelling the subject entries in the Williams customer ledger account and created a "customer receivable" item in the firm's general ledger. However, on or about December 29, 1972, according to them, the subject securities were located by the bank, and immediately thereafter, they advised the bank to redraft the item for collection, and in that connection, according to them, the original journal entry was reversed on the firm's books and records. The item, however, remained uncollectible until on or about February 2, 1973, when, on that date, the subject draft was returned to their bank with a notation that it had been refused by the Williams account. As a result of that advise, they further state, they were prompted then to create still another journal entry to the firm's books and records, which entry set the item up as a customer receivable (including certain bank charges in the amount of \$2,267.50 covering the drafts). This entry or so-called receivable, the record shows, remained on the firm's books and records until on or about June 29, 1973, when the firm liquidated the securities covering that item for approximately \$130,000, thereby resulting in a loss to the firm of approximately \$214,000.

It is uncontroverted that the Respondent firm's Forms "Q" prepared and submitted to the Association by the individually named Respondents for the periods ending February and May 1973, were inaccurate in that inadmissible assets totaling some \$200,000 were not deducted by the Respondents from the firm's net worth figures appearing on the respective forms in order for them to reach an appropriate adjusted net capital figure. This amount, as the record clearly shows, consisted of the unsecured receivables in the Williams Investors account and should have been charged to capital in the firm's computation of its net capital, pursuant to SEC Rule 15c3-1.

Accordingly, we find that such acts, practices and conduct constitute separate and distinct violations of Sections 1 and 21(a) of Article III of the Rules of Fair Practice by the Respondent Member, Dorsey & Company, Inc. and George P. Dorsey and Robert J. Vedros, the individuals responsible for the acts of the Respondent Member, each separately, as alleged in the second Cause of Complaint. We further find such conduct to be inconsistent with just and equitable principles of trade. We are convinced, however, from our review of the record, that it will not support a separate finding of violation of Section 18 of the cited Rules, as alleged. Accordingly, that allegation is dismissed.

Exhibit C.

False and Misleading Forms "M"

(Third Cause)

The requirement to file Form "M" was instituted by the Board of Governors on a nationwide basis in February of 1973. This brief recap of a member firm's financial and operational condition at month end intervals is an integral part of the Association's early-warning system for the detection of potential financial problems. It provides the Association's several District Offices located throughout the nation with the regulatory ability to act at times before a member's financial deterioration reaches crisis proportions. Form "M" must be executed and filed with the Association's District Office by every member of the the Association in the office in which District the respective member's main office is located, on a monthly basis and such report must be recieved in that District Office no later than the close of business on the 10th calendar day following the previous month-end.

The third Cause of Complaint alleges that during the period from on or about March 12, 1973, through on or about July 11, 1973, (complaint erroneously stated June 11, 1973), the Respondent, Dorsey & Company, Inc., acting through its two principal officers, Respondents Dorsey and Vedros, executed and submitted to the Association's District No. 5 office, at its request, the firm's Forms "M", which reflected thereon the Member's financial condition for each of the month-ending periods February through June 1973, and in that connection such filings were false and misleading for the reasons more fully detailed on Amended Exhibit "D" attached to the Complaint and to this Decision.

In their Answer, and at the hearing, the Respondents contended, as they likewise did in connection with the matter embodied in the above Cause of Complaint, that any difference between the figures which it submitted to the District Office when filing the firm's monthly Form "M" and the figures which actually appeared on its books and records and were verified by the examiner, rests solely in the way the Respondents and the Association's staff interprets or treats the Williams Investors account that the firm had classified as a receivable or as an allowable asset item.

Exhibit C.

Amended Exhibit "D" attached hereto more fully details the facts with respect to the charges embodied in this Cause of Complaint and we feel that no useful purpose would be served here for us to elaborate further on the subject of the Williams Investors Account, except for us to state that we have considered and rejected as we did in the second Cause above, the Respondents' contention that the alleged inaccurate and misleading filings of the firm's Forms "M" during the period under question was due to their lack of knowledge or unfamiliarity as to how the Association, under provisions of the SEC's Net Capital Rule 15c3-1, treated items of this nature.

We cannot emphasize forcefully enough the importance that we attach to the adherence to the Commission's Net Capital Rule by all broker/dealers including the Respondent, Dorsey & Company, Inc. A broker/dealer must insure that it is able, at all times, to promptly meet the demands of its customers and this is the reason that the subject Rule provides that assets not readily convertible into cash must be, and are excluded from, a firm's net capital, and we have traditionally held that items such as the Williams account are not readily convertible into cash for purposes of the Net Capital Rule, if in fact, such item is unsecured.

We believe the record sufficiently demonstrates that the Williams account was unsecured. The only additional evidence proffered by the Respondents and their counsel is to the effect that they believed the item was collectible up to the last minute based on certain representations made by the account to the firm and to its counsel and from other representations received from certain banking institutions in this connection. In that connection, they admit, however, that the account did present a degree of being unsecured but contend it had an intrinsic value all during the period under question although it later was liquidated at a tremendous loss to the firm. We do not believe, however, under the circumstances present in this matter that this constitutes clear and convincing proof of the item's value, particularly in terms of readily reducing that asset to a liquid condition, therefore, the Member, when executing and submitting both the Forms "Q" as we found in the above Cause of Complaint, and the firm's Forms "M" in this, the last Cause of Complaint for the period alleged knew or should have known the item under question was not an admissible asset, therefore it is our opinion that such filings were false and misleading.

Exhibit C.

Accordingly, we find that such acts, practices and conduct constitute separate and distinct violations of Sections 1 and 21(a) of Article III of the Rules of Fair Practice by the Respondent Member, Dorsey & Company, Inc.; and George P. Dorsey and Robert J. Vedros, the individuals responsible for the acts of the Respondent Member, each separately, as alleged in the third Cause of Complaint. We further find such conduct to be inconsistent with just and equitable principles of trade. We are convinced, however, from our review of the record that it will not support a finding of violation of Section 18 of the cited Rules, as alleged. Accordingly, that allegation is dismissed.

P E N A L T Y

Based on the foregoing, it is the Decision of this Committee that the following penalties be imposed:

- 1) The Respondent Member, Dorsey & Company, Inc., be censured and suspended from membership in this Association for a period of five (5) business days, commencing on a date to be set by the Executive Office of the Association;
- 2) The Respondents, George P. Dorsey and Robert J. Vedros, each separately, be censured and suspended from association with any Member of the Association in any capacity for a period of five (5) business days, commencing on a date to be set by the Executive Office of the Association and that the time period of suspension for all Respondents is to be concurrent on the date so set by that office; and
- 3) The Respondent Member, Dorsey & Company, Inc., and Respondents George P. Dorsey and Robert J. Vedros be assessed, jointly and severally, the costs of the proceedings in this matter, in the amount of \$924.36.

DISTRICT BUSINESS CONDUCT COMMITTEE
FOR DISTRICT NO. 5

By Edward Roddy
Edward Roddy - Chairman

STATEMENT OF COSTS:

Transcripts.....	\$870.30
Printing Decision....	54.06
	<u>\$924.36</u>

Exhibit C.

Complaint No. N-217

DORSLEY & COMPANY, INC.Exhibit "A" - Page 1 of 2.

Analysis of Form 17A-10 for the Calendar Year 1972
detailing only corrected entries

<u>Description</u>	<u>Form 17A-10 Original Filing</u>	<u>Form 17A-10 Amended Filing</u>
<u>Introduction</u>		
Page 4 - Sources of Gross Income		
15K Other Income	\$ -0-	\$ 15,155.00
15M Interest/Dividends	49,412.00	51,902.00
15 Sum	Not Indicated	281,523.00
16d. OTC Agency	58,380.00	51,598.00
16c. OTC Principal	262,204.00	267,565.00
Sum	584,462.00	319,163.00
Page 5 - 17. Income from 16. above	584,462.00	319,163.00
20. Gross Securities Income	487,610.00	513,788.00
26. Total Number of Registered Personnel		
Registered Representatives	2	3
Principals	3	2
Total	5	5
 <u>Part II</u>		
<u>Statement AA</u>		
Page 1 - Income		
2(a)(1) Commission Received	\$ 58,380.00	\$ 51,598.00
(2) Commission Paid	-	60,000.00
(3) Balance	58,380.00	(8,402.00)
2K. Subtotal	58,380.00	(8,402.00)
Page 2 - 4 Gain or Loss		
(a) Exempt	157,568.00	127,568.00
(c) Other Non-Exempt	319,102.00	267,565.00
(d) Subtotal	476,679.00	395,133.00
Page 3 -		
9(a) Dividends/Interest	49,412.00	51,902.00
(e) Subtotal	49,412.00	Not indicated
10 Other Income	Not Indicated	15,155.00
11 Total Income	584,462.00	453,788.00

Exhibit C.

sey & C. my, Inc.
analysis of Form 17A-10

Complaint No. N-21
Exhibit "A"

Page 2 of 2.

<u>Description</u>	<u>Form 17A-10 Original Filing</u>	<u>Form 17A-10 Amended Filing</u>
Page 4 - Expenses		
13. Employees Compensation		
(a) Executives	\$ 25,000.00	\$ 55,000.00
(b) Registered Representatives	44,690.00	43,134.00
(c) All Other	40,777.00	60,067.00
(d) Subtotal	110,467.00	158,201.00
16. Occupancy Expense	Not Indicated	6,456.00
19. Interest Expense	65,837.00	108,814.00
20. Other Expenses	163,773.00	279,247.00
21. Total Expenses	373,177.00	585,820.00
22. Operating Income (Loss)		
before Income Tax	211,283.00	(132,032.00)
23. Provision for Fed. Income Tax	50,000.00	52,500.00
24. Operating income (loss)	161,283.00	(184,532.00)
26. a. Total operating income (loss)	161,283.00	(184,532.00)

Statement BB

Capital Funds

Page 7 (Note: Presented in detail)

1. Balance at beginning of year	\$ 966,209.00	\$ 966,209.00
2. Operating income (loss)	161,283.00	(184,532.00)
6. Increase (decrease) in value of exchange membership	(11,000.00)	(11,000.00)
12. Balance at end of year	<u>770,677.00</u>	<u>770,677.00</u>
(Note: totals of above figures:	\$1,116,490.00	\$ 770,677.00)

Exhibit C.

Complaint No. N-217

DORSEY & COMPANY, INC.

At Issue Exhibit "B"

Page 1 of 2.

Comparison of Form Q
To Trial Balances and Net Capital Computations
For Period Ending February 1973

<u>Selected Items</u>		<u>Form Q Original Filing</u>	<u>Form Q Amended Filing</u>	<u>Per Trial Balance & Staff Computation</u>	<u>Differences</u>
Cash	(1a)	47,181	\$ 47,181	\$ 47,181	
Escrowed	(1b)	55,017	-	-	1
Reserve	(1c)	72,646	72,646	72,646	
Receivables from Customers	(3a)	1,402,726	1,602,726	1,492,673	2
INVENTORY					
Non-Exempts	(4 a.1.)	801,771	811,971	523,574 (Stocks)	
Exempts	(4 a.2.)	572,855	572,855	861,250 (Bonds)	
[(Total Inventory)]		(1,374,626)	(1,384,826)	(1,384,824)]	
Totals	(7)	3,403,703	3,558,886	3,448,832	
Unsecured Cust. Rec.	(8)	200,000	-	110,054	3
Unsecured Loans	(15)	21,878	21,800	21,880	
Deposits & Prepaid Items	(16)	52,682	55,679	107,870	4
Other Non-Allowable Assets	(18)	-	-	309	
Total Non-Allowable Assets	(19)	315,631	118,360	295,913	
Total Assets	(20)	3,719,064	3,677,246	3,744,746	
Taxes Payable	(25)	50,000	-	-	5
Expenses Payable	(27)	38,079	38,082	38,082	
Total Liabilities in A.I.	(29)	2,060,922	2,010,925	2,010,925	
Total Liabilities	(36)	2,968,076	2,918,079	2,918,079	
Capital Stock	(37)	100,000	100,000	100,000	
Earned Surplus	(39)	515,217	515,217	515,218	
Realized Profit (Loss)	(40a)	155,346	155,346	187,945	
Unrealized Profit (Loss)	(40b)	(87,813)	(87,813)	(44,736)	
Reserve Account	(41)	68,238	68,238	68,238	
Total Capital	(42)	950,988	750,988	826,606	
Total Liabilities & Cap.	(43)	3,719,064	3,669,067	3,744,746	
Additional Entry to Balance			8,179		
			3,677,240		

¹ Original Form "Q" included deposits as escrowed cash.

² Firm deducted \$200,000 customer receivables as cushion in original

³ Form "Q", then included all as secured in amended.

⁴ Original Form "Q" - Prepaid Taxes - \$52,682
Amended Form "Q" - Deposits, Prepaid Taxes, Difference A/C - \$55,678
Trial Balance - All Prepaid Items, Deposits - \$107,870

⁵ Original Form "Q" included Prepaid Taxes as Liabilities

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Exhibit C.

COMPANY INC.

Complaint No. N-217
 Amer. Ct. Exhibit "B" - Page 2
 of 2.

<u>Selected Items</u>		<u>Form Q Original Filing</u>	<u>Form Q Amended Filing</u>	<u>Trial Balance & Staff Computation</u>	<u>Difference</u>
Total Assets	(44a)	\$ 3,719,064	\$ 3,677,246	\$ 3,744,746	
Less Total Liabilities	(44b)	2,908,076	2,918,079	2,918,079	
Net Worth	(44c)	750,988	759,167	826,667	
Less Non-Allowable Assets	(44d)	315,361	118,360	295,913	
Current Capital	(44e)	435,627	640,807	530,754	
Haircuts	(44f)	199,652	199,725	199,725	
Fail Haircuts	(44g)	-	-		
Net Capital	(44h)	235,975	441,082	331,029	
Aggregate Indebtedness	(45)	2,000,922	2,010,925	2,010,925	
Net Capital Ratio	(46)	8.73	8.73	6.07	

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Exhibit C.

Complaint No. N-217

Amended Exhibit "C"

DORSEY & COMPANY, INC.

Comparison of Form Q to Trial Balance and Net Capital Computation
For Period Ending May 1973

<u>Selected Items</u>	<u>Form Q</u>	<u>Trial Balance & Staff Computation</u>	
Cash (1a)	\$ 97,750	\$ 69,688	(Firm failed to note Reserve Account in Form
Cash (1c)	-0-	28,063	(
Customer Receivables (3a)	892,141	684,320	In Form "Q", firm failed to deduct unsecured amou in Customer a/c
Total (7)	2,603,820	2,396,001	See (3a) above
Customer Receivables (Unsecured) (8)	-0-	207,821	See (3a) above
Unsecured Loans Advances (15)	25,648	25,481	
Deposits (16)	-0-	62,063	
Other Non-Allowables (18)	144,567	83,200	
Total Non-Allowables (19)	215,423	434,779	
Total Assets (20)	2,819,243	2,830,780	
Securities Short (33)	48,871	47,500	
Total Liabilities (36)	2,107,787	2,106,419	
Profit or Loss (40a Realized)	192,000	193,336	
Profit or Loss (40b Unrealized)	(164,000)	(152,432)	
Total Capital (42)	711,456	724,362	
Total Capital & Liabilities (43)	2,819,243	2,830,780	
Net Capital (44)			
Total Assets (44a)	2,819,243	2,830,780	
Less Liabilities (44b)	2,107,787	2,106,419	
Net Worth (44c)	711,456	724,361	
Less Non-Allowables (44d)	215,423	434,779	
Current Capital (44e)	496,033	289,582	
Less Haircuts (44f)	153,525	153,525	
Net Capital (44h)	342,508	136,057	
Aggregate Indebtedness (45)	1,416,716	1,416,716	
Net Capital Ratio (46)	4.11	10.4	

Exhibit C.

Complaint No. N-217

Dorsey & Company, Inc.Amended Exhibit "D"Analysis of Form MCovering only items with Corrections

<u>Item</u>	<u>Form M</u> <u>Initial Filing</u>	<u>Form M</u> <u>Amended Filing</u>	(000) <u>T/Bal. & S</u> <u>Computation</u>
January 1973			
Current Capital	666	707	707
Unrealized Profit (Loss)	25	20	20
Net Capital	533	549	549
February 1973			
Cash	49	47	47
Inventory	1,360	1,384	1,384
Current Capital	705	640	530
Unrealized Profit (Loss)	(72)	(45)	(44)
Net Capital	305	441	330
March 1973			
Inventory	1,505	1,604	1,514
Current Capital	735	596	481
Realized Profit (Loss)	1	(56)	(26)
Unrealized Profit (Loss)	(20)	(25)	(14)
Net Capital	335	414	307
April 1973			
Cash	89	92	91
Current Capital	745	512	344
Unrealized Profit (Loss)	(105)	(111)	(125)
Net Capital	318	305	138
May 1973			
Cash	66	-	60
Fails to Receive	898	-	1048
Current Capital	487	-	289
Realized Profit (Loss)	24	-	19
Unrealized Profit (Loss)	(151)	-	(151)
Net Capital	358	-	135

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Exhibit C.

June 1973

Fails to Deliver	910	-	914
Fails to Receive	991	-	1272
Inventory Short	82	-	80
Current Capital	459	-	245
Realized Profit (Loss)	(121)	-	(118)
• Unrealized Profit (Loss)	(69)	-	(65)
Net Capital	341	-	143

Trial Transcript.

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MR. SADOWSKY: No further questions.

THE COURT: All right. The witness may be excused.

(Witness excused)

MR. SADOWSKY: Your Honor, I call at this time Mr. Robert Vedros.

R O B E R T J. V E D R O S, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SADOWSKY:

Q Mr. Vedros, by whom are you employed?

A Dorsey and Company, Incorporated.

Q Is that the plaintiff in this action?

A Yes, sir.

Q How long have you been employed by that company?

A Twelve, thirteen years.

Q And in what capacity are you presently employed?

A Secretary-treasurer.

Q And what position did you hold in 1972?

A The same position.

Q And what are your principal duties at the company?

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2 A Principal duties are trading of stock, executing
3 of orders, and general office routine, supervising of the
4 office.

5 Q Do you know Robert Tomarkin and Lloyd Whitkind?

6 A Yes.

7 Q Were they customers of the plaintiff?

8 A Yes.

9 Q Can you tell me when they first became customers
10 of the plaintiff?

11 A Late March of '72 or early April '72, approximately.

12 Q Can you tell me the names in which they traded
13 with you?

14 A Tomarkin traded under the name of Williams Investors
15 Company, and Whitkind traded under the name of Whitkind
16 Realty Company.

17 Q Did they buy and sell with you?

18 A No, sir; they just bought.

19 Q They just bought but did not execute any sales?

20 A No sales.

21 Q All right.

22 Prior to the transaction which is the subject
23 of the lawsuit, how was the method of delivery and payment --
24 what was the method of delivery and payment?

25 A Delivery of all purchases made by both accounts

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was delivery versus payment.

Q What does that mean, "delivery versus payment"?

A The stocks which were purchased are attached to a draft, deposited with our bank -- in this case, the Hibernia National Bank -- and shipped to a bank specified by the customer for payment upon receipt by the bank to whom it is sent.

Q And prior to this transaction, how were these delivery versus payment transactions consummated?

A The consummation of the purchases previous to this transaction were the delivery of the stock, draft attached, to the Hibernia National Bank, originally with the collection department, and then forwarded to a bank in Montreal, to be presented to a clearing agent by the name of Massey Lavoie who then paid for the drafts.

Later the drafts that were sent up to Montreal were sent through the foreign or international department of the Hibernia National Bank.

Q But, in each case, whether it was the collection department of the Hibernia Bank or the foreign department, the documents were delivered to Canada; is that right?

A Yes, sir.

Q For clearance?

A Yes, sir.

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Q And did you receive payment each time?

A Yes, sir.

Q And how many such transactions were involved?

A Approximately six or seven.

Q Were they large transactions?

A Yes, sir. They always bought large amounts of shares, and the dollar amounts went as high as the six-figure area.

Q The value of the securities sold was in the six figures; is that what you are saying?

A Securities purchased were in the six-figure area in market value.

Q In connection with the transaction which is the subject of this action, did you receive different instructions?

A Yes, sir, I did.

Q From whom did you receive those instructions?

A From Robert Tomarkin.

Q What did he tell you?

A He told me to draft the securities to the Bank of Haiti, Republic National Bank of Haiti in Port au Prince.

Q To the account of any --

A To the account of Paul Supart & Company.

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Q Did you purchase the stocks which are mentioned on the face of the drafts marked as Exhibit 1?

A Yes, sir.

Q And did you prepare the drafts which are part of Exhibit 1?

A The drafts were prepared by the bank office employees, but I signed the drafts to be presented to the Hibernia National Bank.

Q And did you send down Exhibit 1 together with the stock certificates to the Hibernia National Bank?

A Yes, sir.

Q Was that on or about September 25th?

A Yes, sir.

Q When you learned that the stocks were apparently missing, what did you do?

MR. McALLISTER: Objection, your Honor.

THE COURT: I will sustain it as to form.

Q Did you receive any communication from the Bank with respect to the stock?

A The Bank told me that they could not locate the stock in the bank in Haiti, and we had to assume that they were lost, and ordered --

Q Not what you assumed; what did you do?

A Well, when we found out that the Hibernia Bank could

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not locate the securities in the Haitian bank, we --
I personally telephoned the transfer agents of the stock
that were involved and told them that we believe the
securities were lost and we wanted stock transfers
placed against them.

THE COURT: When did you do that?

THE WITNESS: Pardon me, sir?

THE COURT: When did that occur?

THE WITNESS: Immediately after the cable
from the Hibernia -- that the Hibernia National Bank
received, that stated by the Bank in Haiti that the
drafts were apparently not received.

THE COURT: Can you fix the date of that?

THE WITNESS: By mid-October, sir.

Q 1972?

A 1972, yes, sir.

Q Did you take any other steps, Mr. Vedros?

A The Banks informed me that I had to submit
written letters of stock transfer, outlining the certificate
numbers and the names they were registered in, and that they
would send me the necessary papers to obtain duplicate
certificates.

THE COURT: Which Bank informed you of that?

THE WITNESS: The transfer banks for the

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different stocks involved, your Honor.

MR. McALLISTER: "Transfer agent" would be a better expression.

THE WITNESS: Transfer agent.

Q And did you subsequently receive mail-loss affidavits from these transfer agents?

A Yes, sir. I received from the transfer agents an affidavit form that required an affidavit of non-receipt by the addressee, which I gave to Mr. Robin of the Hibernia National Bank to be forwarded to the Bank in Haiti to be filled out.

MR. McALLISTER: Could we fix a time for that, your Honor?

MR. SADOWSKY: Well, let me --

Q Can you remember the date? Perhaps I can help you refresh your recollection.

A No.

(Exhibit No. 8 was handed to the witness.)

A Yes, it would be about the first part of November, 1972.

Q I showed you Exhibit 8 and that refreshes your recollection that it was in the first part of November, 1972?

A Yes, sir.

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Q Now, did you hear from your customers during this period in October and November 1972?

A Yes, sir. I received several telephone calls from Mr. Tomarkin.

Q What did he say to you and what did you say to him?

A He was calling, inquiring about the shipment of the securities, whether it had been done, and if I had any knowledge that the draft had arrived and been paid, because he was looking for his stocks.

Q Did he give you any instructions with respect to the securities?

MR. McALLISTER: Just for the clarity of the record, your Honor, could we identify who in Dorsey and Company received the conversations?

THE WITNESS: I received them myself.

Q Did he give you any instructions with respect to the securities?

A Once I told him that the draft could not be located, he asked me to sell the securities.

Q Were you able to sell them?

A I was prohibited by the securities rules from selling the securities because I did not know the specific location. At that time there was a rule that you had to

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be assured of physical delivery of securities before entering sale orders.

Q When were the securities returned to you?

A December 22, 1972.

Q Did you take any steps to deliver them against payment to Mr. Tomarkin and Mr. Whitkind or their companies?

A We tried to make delivery to them, yes, sir.

Q Did they refuse to accept delivery?

A Yes, sir.

Q Did they make payment?

A No, sir.

Q Did there come a time when you sold the securities?

A Yes, sir.

Q What did you receive on the sale of the securities?

A Approximately two hundred fifty-six thousand dollars.

THE COURT: Can't we get some dates here?

MR. SADOWSKY: On the sale of the securities, yes.

Q When did you sell the securities, do you know?

A In April '73 -- excuse me, May of '73.

MR. SADOWSKY: May we have these documents marked for identification? They are Dorsey and Company bookkeeping records.

(Plaintiff's Exhibit No. 13 was marked for

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identification.)

Q Mr. Vedros, I show you Exhibit 13 for identification and ask if it refreshes your recollection as to when you sold the securities in question.

MR. McALLISTER: Objection, your Honor.

THE COURT: It's allowed.

A Yes, sir, these were the ultimate sales of the securities.

Q And does it refresh your recollection as to when they were sold?

A Yes, sir, May of 1973.

Q And you say that you realized \$256,000 on the sale?

A Approximately.

THE COURT: How much had you paid for them, purchased them at?

THE WITNESS: \$628,000, including commission.

Q That is the total amount of the drafts?

A Yes, sir.

Q Does the total amount of the drafts indicate the cost of the securities plus your commission?

A Yes, sir.

Q Did you incur any other expenses in connection with the the transaction?

A Yes, sir, there was approximately \$1,500 worth

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2 of charges by the Hibernia National Bank.

3 Q Do you have any breakdown? Is there anybody
4 that can refresh your recollection as to what those charges
5 were?

6 A There were commission charges for about \$1,250.

7 Q Can we have it exactly?

8 THE COURT: Commission charges for what? Whom?
9 I don't follow that.

10 THE WITNESS: These were commission charges by
11 the Hibernia National Bank to send the drafts down to
12 Haiti.

13 THE COURT: Wasn't that included in the \$628,000?

14 THE WITNESS: No, sir. This is over and above.

15 Q And what other charges did you have?

16 A We had cable charges.

17 Q Of how much?

18 A About \$175. We had an insurance premium charge
19 which covered mail going out of the country by the Hibernia
20 Bank in the amount of \$170. And there were some telephone
21 calls, I think, amounting to about \$50.

22 MR. McALLISTER: I move to strike the last
23 part; speculative. He said, "I think." Guessing.

24 A We were actually charged by the Hibernia Bank
25 \$49.50 for long-distance calls from New Orleans to Haiti,

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plus we had an additional call which I myself made, in the amount of \$25 from New Orleans to Haiti, that I made the telephone call personally.

Q Can you tell us about that telephone call and when it took place?

A It took place about the middle of October 1972, and I called the Bank in Haiti, trying to reach the collection department where the draft would have been presented for payment. And I spoke to a Mr. George Colbert --

MR. McALLISTER: Spell that please.

THE WITNESS: C-o-l-b-e-r-t.

Q Will you tell us what that conversation was?

A I attempted to inquire from Mr. Colbert if he had received the draft sent by the Hibernia National Bank. I stated the amount of the draft, and he spoke broken English, and I spoke no French, so we had a little bit of a difficulty in communicating, but he did relate to me that he knew nothing about it, and he didn't see any draft from the Hibernia or anything.

Q Did you have any other conversation with the Bank in Haiti, or were you party to any other conversation with the Bank of Haiti?

A I was a party to a conversation that Mr. Robin of the Hibernia National Bank placed to the Bank in Haiti.

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Q When was that?

A This was about the third week of November, 1972, and he spoke to a Mr. Bonnefil.

Q Third week of when?

A Of November, 1972.

He spoke to a Mr. Bonnefil. We were attempting to get the affidavits of nonreceipt back from the Bank in Haiti, so that we could forward them to the transfer agents and have duplicates of certificates issued.

Mr. Bonnefil related to Mr. Robin that he had not seen the original affidavits of nonreceipt which Mr. Robin had sent down previous to this conversation, and Mr. Robin told him that he was going to send down a second set of these affidavits, and that it was very urgent and imperative that the Bank fill out the affidavit of nonreceipt and return it to him as soon as possible, so that we could obtain duplicate certificates.

Q Did the name Supart & Company come up at this conversation?

A No, sir, not at all.

Q Did anyone, prior to the commencement of this action, relate to you that there was no such company as Paul Supart & Company?

A No, sir.

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Vedros-cross

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MR. McALLISTER: I have no further questions.

THE COURT: Suppose we take our mid-morning recess at this point.

(Recess)

CROSS-EXAMINATION

BY MR. McALLISTER:

Q Mr. Vedros, how old are you?

A Thirty four.

Q You have been in this stock brokerage business ten or twelve years?

A Twelve, thirteen years.

Q All with Dorsey and Company?

A Yes, sir.

Q And are you a registered principal at the NASD?

A Yes, sir.

Q Is Dorsey and Company registered with the SEC?

A Yes, sir.

Q And it is also registered with the NASD? It is a member firm of the NASD?

A Yes.

Q What is your educational background?

A High school graduate, 2-1/2 years of business administration, LSU, Louisiana State University.

Q No degree, though?

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Vedros-cross

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A No, sir.

Q What is your position with Dorsey and Company?

A Secretary-treasurer.

Q And you are registered as a registered principal,
are you not, with the NASD?

A Yes. That is what I just stated.

Q Are there other registered principals of Dorsey
and Company?

A George P. Dorsey.

Q Do you own any stock in it?

A No, sir.

Q You are strictly a salaried employee?

A Salaried and commission.

Q Based on what? What are the commissions based on?

A The amount of commissions generated by sales
and purchases of stocks and bonds.

Q In other words --

THE COURT: Please try to keep your voice up.

THE WITNESS: Excuse me, your Honor.

Q In other words, you receive income from sales from
clients of yours for whom you transact business; is that
correct?

A Yes, sir.

Q And approximately what percentage of the commissions

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Vedros-cross

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is yours in that?

A 50 percent.

Q 50 percent?

A Yes, sir.

Q Better than most.

Are you familiar with --

MR. SADOWSKY: I ask the remark be stricken,
your Honor.

THE COURT: I didn't hear it.

Q As a registered principal in the NASD, you
are familiar with the Rules of Fair Practice, are you not?

A Yes, sir.

Q And you are familiar with Section I, Article (3),
Rules of Fair Practice, dealing with business conduct of
members?

A Yes, sir.

Q And Section II (1) regarding books and records?

A Yes, sir.

Q Are you familiar with Rule 15b-10(4) of the
Securities and Exchange Commission, dealing with solicitation
and suitability requirements?

A Yes, sir.

Q And, in fact, Rule 15b-10(4) deals with the
opening of accounts, does it not?

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A Yes, sir.

Q And supervision of accounts?

A Yes, sir.

Q Would it be fair to say that Rule 15b-10 and Section I, Article (3) of the NASD require you to learn the essential facts regarding a customer when you open an account for a customer?

MR. SADOWSKY: Objection, your Honor.

THE COURT: I will allow him to answer it.

THE WITNESS: Would you please repeat the question?

(Record read)

A Yes.

Q A shorthand way of saying it is you must learn to know your customer; is that right?

MR. SADOWSKY: Objection to the characterization, your Honor.

THE COURT: What difference does it make? I am sitting without a jury.

Q You may answer.

A Yes, sir.

Q Mr. Vedros, if I recall correctly, the Williams Investors and Whitkind Realty accounts were opened in April 1972?

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Vedros-cross

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2 A Approximately.

3 Q Can you tell us the circumstances of the opening
4 of those two accounts?

5 A Yes, sir. We received a -- Dorsey and Company
6 received a telephone call from Mr. Lloyd Whitkind,
7 and Mr. Dorsey was the person that he was calling, and
8 he wanted to open an account and place some orders.

9 He told Mr. Dorsey that he was referred to our
10 firm by a mutual friend of his and Mr. Dorsey's here
11 at Bache & Company in New York, and Mr. Dorsey --

12 Q Do you know the name of that mutual friend?

13 A No, sir, I don't know.

14 At that point, Mr. Dorsey told me to take the
15 orders from Mr. Whitkind and open the account, which I did.

16 Q Were they in separate conversations, the
17 instructions by Mr. Dorsey to open the account and to take
18 the orders?

19 A It was while he was on the telephone with Mr.
20 Whitkind.

21 Q Were you on an extension?

22 A No, sir.

23 Q You don't know who the fellow at Bache is that
24 was the mutual friend?

25 A No, sir.

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Vedros-cross

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1 jkmch Vedros-cross 43
2 Q Can you fix the date when this occurred?

3 A Approximately the beginning of April, 1972.

4 I can't fix it specifically, no, sir.

5 Q And this is Mr. Williams?

6 A No, sir; Mr. Whitkind.

7 Q Mr. Whitkind, I'm sorry.

8 What about Mr. Tomarkin, when did he open his
9 account?

10 A Several days later, Mr. Whitkind called me
11 and said that he had a friend of his that had been doing
12 business much along the same lines as he had done himself,
13 and that he'd like to open an account and start doing
14 business with us.

15 Q And he called you directly?

16 A Mr. Whitkind called me, yes, sir.

17 Q I thought Mr. Whitkind was the first one.

18 A Mr. Whitkind called me and told me that he had
19 a friend of his that wanted to open an account, Mr.
20 Tomarkin, and I got on the telephone and spoke with
21 Mr. Tomarkin then.

22 This was the same conversation.

23 Q The same conversation?

24 A Yes, sir.

25 Q You believed Mr. Tomarkin and Mr. Whitkind were in

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Vedros-cross

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2 the same office, or something like that? This wasn't in
3 your presence; this was a telephone conversation?

4 A Telephone.

5 Q Do you have new account approval forms at Dorsey
6 and Company?

7 A We have new account cards.

8 Q New account cards.

9 And do you have new account cards for either
10 of these accounts?

11 A No, sir.

12 Q Did you ask either Mr. Whitkind or Mr. Tomarkin
13 for bank references?

14 A We sent them new account cards to be filled out
15 and returned.

16 MR. McALLISTER: I move to strike the answer,
17 your Honor.

18 THE COURT: I will let it stand. What difference
19 does it make? You may pursue it further, if you want.

20 Q Were you ever given a bank reference by either
21 of these gentlemen?

22 A The Bank of Montreal.

23 Q Did you speak to the Bank of Montreal?

24 A No, sir.

25 Q Did you ever receive the new account cards signed

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Vedros-cross

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1 by either Whitkind or Tomarkin?

2 A No.

3 Q Did you ask what the investment objective of
4 these gentlemen was in April 1972?

5 A They informed me that it was just short-term
6 trading for profits.

7 Q And did you ask them what assets they had,
8 or any other financial questions along those lines in
9 that April 1972 conversation?

10 A No, sir, I did not.

11 I was directed by Mr. Dorsey to take this
12 account and to execute the orders.

13 Q That is Mr. Whitkind's account?

14 A I consulted him on Mr. Tomarkin, also.

15 Q Prior to September 25, 1972, had you met either
16 of these gentlemen?

17 A No, sir.

18 Q All your communications were by telephone with
19 these two gentlemen?

20 A Yes.

21 Q In what names were these accounts opened by
22 Tomarkin and Whitkind?

23 A Whitkind opened an account in the name of
24 Whitkind Realty; Tomarkin opened an account in the name of
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Vedros-cross

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Williams Investors.

Q Are these corporations?

A They told me they were solely-owned private corporations by each of themselves, and they were 100-percent stockholders of both.

Q Did they identify any other officers of either entity?

A No, sir.

Q Members of the board of directors?

A No, sir.

Q Did you ask for a corporate resolution?

A Yes, sir.

Q Did they give you one?

A They told me they didn't have to have one because it was a private corporation which they used solely for tax purposes.

Q And that satisfied you?

A Yes, sir.

Q The fellow at Bache, did he know Tomarkin or did he just know Whitkind?

A To the best of my knowledge, Mr. Whitkind told Mr. Dorsey that he had a mutual friend at Bache & Company.

Q But it was not Tomarkin's mutual friend?

A I don't know.

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Vedros-cross

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Q When did you have your first transaction in either of these accounts?

A Early April '72.

Q Do you know the nature of the transaction?

A They were purchases of large blocks of stock.

Q Do you know the approximate amount?

A Not right offhand.

Q Do you know what securities were involved?

A I can recall several of the securities that were purchased by the two accounts.

Q I'm talking about the initial series of transactions, or the initial transaction.

A I can't recall it right offhand, no, sir.

Q Between -- well, just to set a chronology here, the first purchase in connection with the transaction in suit took place on or about August 15, 1972; is that correct?

A Approximately.

Q Okay.

Now, prior to August 15, 1972, and after April 1, 1972, approximately how many different transactions did you have for these two entities, Whitkind Realty and Williams Investors?

A As I stated earlier, I believe it's approximately six or seven transactions.

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Vedros-cross

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Q Separate transactions?

A Yes, sir.

Q What was the nature of each of these transactions?

A What do you mean by the nature of the transactions?

Q Well, were they purchased on margin, were they sales?

A As I stated, they only purchased stocks through me, not on margin, and were all listed securities, either the New York Stock Exchange or the American Stock Exchange.

Q That is for the transactions prior to August 15th?

A Yes, sir.

Q Were they all delivery against payment?

A Yes, sir.

Q And were they all deliveries through the Bank of Montreal?

A Yes, sir.

Q And were they all for the account of Whitkind Realty or Williams Investors to be collected against -- do you understand that? Maybe you could --

MR. McALLISTER: Strike that.

Q Why don't you describe for us, step-by-step, the procedure to be followed by Dorsey and Company in these purchases and delivery against payment?

A As I stated, when the stocks were bought, there

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Vedros-cross

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1 was delivery versus payment. When the stocks were
2 received, the drafts for the amount of the purchase were
3 typed up, attached to the certificates given to the
4 Hibernia National Bank to be shipped to the Bank of
5 Montreal, for the account of Massey Lavoie, for Whitkind
6 and Tomarkin, and to be collected.

8 Q Their corporate entities; right?

9 A Yes.

10 Q When you say for the account, Massey Lavoie
11 for Whitkind Realty and Williams Investors, does that
12 mean that Williams Investors and Whitkind Realty had accounts
13 at Massey Lavoie?

14 A Yes, sir.

15 Q They had securities accounts there?

16 A Yes, sir.

17 Q And Massey Lavoie was a broker-dealer?

18 A Yes, sir.

19 Q A Canadian broker-dealer?

20 A Yes, sir.

21 Q Were there any problems with any of these
22 transactions?

23 A No, sir.

24 Q You were never advised at any time -- by "you"
25 I mean Dorsey and Company -- that the Bank or Montreal or

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Vedros-cross

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2 Massey Lavoie were either of these fellows or their
3 entities?

4 A Subsequent to the delivery of this transaction in
5 question, the Massey Lavoie did not want to take any
6 deliveries for Whitkind.

7 Q When did that occur?

8 A Immediately preceding the delivery of the
9 securities to the Bank in Haiti.

10 Q That would be in September 1972?

11 A Yes, sir.

12 Q And I'm sorry, was it Massey Lavoie told you
13 they wouldn't receive any more certificates for --

14 A Yes, sir.

15 Q -- for Whitkind?

16 A Yes, sir.

17 Q Did they tell you the reason why?

18 A No, sir.

19 Q Did you ask?

20 A No, sir.

21 Q Do you do business generally with Massey Lavoie?

22 A Only through these two accounts.

23 Q And you just accepted the bald statement that
24 Massey Lavoie refused to do business with these people?

25 MR. SADOWSKY: Object to the question as to form.

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1 THE COURT: Leave out the "bald statement."

2 Sustained as to form.

3 Q And you merely accepted the statement by Massey
4 Lavoie that they refused to do business with Whitkind;
5 is that correct?
6

7 A Yes, sir.

8 Q Did you have any written communication with
9 Massey Lavoie other than the normal commercial papers
10 flowing back and forth?

11 A No, sir.

12 Q And you had approximately six or seven trans-
13 actions between April 1, 1972 and August 15, 1972?

14 A Yes, sir.

15 Q And would you say there was -- that is a four-
16 month period, four-and-a-half-month period -- and would
17 you say the six or seven transactions were spread evenly out
18 over that four-and-a-half-month period?

19 A I can't recall that.

20 Q Is it fair to say that they were spread out
21 over four and a half months?

22 A I don't know if it's fair or not.

23 Q Were all of the transactions in the month of
24 April 1972?

25 A No, sir.

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Q Were all of the transactions in June of 1972?

A No, sir.

Q Were all of the transactions in July of 1972?

A No, sir.

Q Well, based on those statements, would it be fair to say that the six or seven transactions were spread out over the four-and-a-half-month period?

A All the transactions were secured between April and August of 1972.

Q Okay.

Now, as in this case, were the transactions such that the purchase orders were given to you over a period of time, you collected the securities in on the various purchase orders, and shipped them in one package to the Bank of Montreal; is that how the six or seven transactions took place?

A Which six or seven transactions?

Q The ones we are talking about between April 1, 1972 and August 15, 1972.

A No, sir.

Q Was it each of the transactions was merely one order, you received the certificates in and sent them up to the Bank of Montreal?

A The transactions between April '72 and August

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of '72 were one or two at a time, and when delivery was received the stocks were then drafted.

At some later date, additional purchase orders were entered and executed. When those securities came in, they were shipped up to the Bank of Montreal.

Q Okay.

Were they different securities, or were these transactions all in one security?

A They were different securities.

Q Approximately how many different securities?

A I would only be guessing. I don't know.

Q Now, getting into this transaction on or about August 15th -- and I will give you Plaintiff's Exhibit 1, if that will help refresh your recollection -- you started to receive telephone calls from either Whitkind or Tomarkin regarding the purchases in suit; is that correct?

A Yes, sir.

Q But the Plaintiff's Exhibit 1 does not give you the dates of the purchases, does it?

A No, sir.

MR. McALLISTER: At this time I will have to --
Off the record, your Honor.

(Pause)

MR. McALLISTER: Your Honor, at this time I would

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1 like to have marked for identification Defendant's
2 Exhibit A.

3 (Defendant's Exhibit A was marked for identifi-
4 cation.)

5 Q Mr. Vedros, could you identify Defendant's
6 Exhibit A for the record, please?

7 A This is part of a five-part confirmation form that
8 we use in our office for confirming transactions, and this
9 is what we call the cashier or delivery copy which is
10 attached to the securities when they are delivered to the
11 customer.

12 Q And does Defendant's Exhibit A identify the trades
13 in suit except for, I believe, there is one trade missing?
14 Is that correct?

15 MR. SADOWSKY: 500 shares of C & R Clothiers.

16 Q Is that correct?

17 A I don't understand your question.

18 Q Okay, I will rephrase it.

19 Except for 500 shares of C & R Clothiers, does
20 Defendant's Exhibit A reflect the orders executed by
21 Dorsey and Company on behalf of Whitkind and Tomarkin?

22 A Yes, sir.

23 Q And does it also reflect the dates on which
24 those transactions were executed?
25

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1 A No, sir.

2 Q Well --

3 A Oh, excuse me. Your exhibit, yes, sir.

4 Q Defendant's Exhibit A?

5 A Yes.

6 MR. McALLISTER: Your Honor, at this time I move
7 the admission of Defendant's Exhibit A.

8 MR. SADOWSKY: I have no question as to their
9 authenticity. I have a question as to the relevance to
10 any issue in this case and I object to them on that
11 ground, your Honor.

12 THE COURT: They may be received. They may have
13 some relevance. I'm not sure at this point.

14 (Defendant's Exhibit A for identification was
15 received in evidence.)

16 Q Looking at Defendant's Exhibit A, Mr. Vedros,
17 the transaction dates run between August 15, 1972 and,
18 apparently, September 11, 1972; is that correct?

19 A Yes, sir.

20 Q And each of these transactions are registered
21 on your books and records separately, are they not?

22 A Yes, sir.

23 Q Mr. Vedros, you are familiar with Regulation T
24 in your capacity as a registered principal, are you not?
25

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1 A Yes, sir.

2 Q And are you familiar with the term, "letter of
3 free credit" or "free funds"?
4

5 A No, sir.

6 Q Have you ever read Regulation T?

7 A Yes.

8 Q I would like to draw your attention to
9 Section 220.4c8, and ask you if you have ever read that
10 paragraph --

11 MR. McALLISTER: And directing the witness'
12 attention to it.

13 A Yes, I am familiar with this part of the rules.

14 Q And are you familiar with the memorandum of
15 the Board of Governors immediately following the cite
16 that I just gave you in the NASD Manual? And I am
17 specifically referring to the paragraphs captioned "Frozen
18 Accounts."

19 Are you familiar with that?

20 A Yes, sir.

21 Q And are you familiar with the statement, "In
22 case of delivery to another broker-dealer, the delivering
23 broker obtains from the receiving broker a written statement
24 that the securities are being accepted for a special cash
25 account of the customer in which there are already sufficient

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1 funds to make full cash payment for the securities so
2 received"? You are familiar with that provision?

3
4 A No, sir.

5 Q You have never heard of that before?

6 A No, sir.

7 Q Did you ever obtain such a written statement
8 from either Massey Lavoie or from Paul Supart & Company?

9 MR. SADOWSKY: Objection, your Honor.

10 THE COURT: I don't understand the Paul Supart
11 part of the question.

12 MR. McALLISTER: I will withdraw that part.

13 THE COURT: Is he a broker here?

14 MR. McALLISTER: We don't know who they are.

15 THE COURT: I understand that. I don't see its
16 relevancy.

17 MR. McALLISTER: I will withdraw the Paul Supart
18 part.

19 Q Did you ever receive anything like that from
20 Massey Lavoie, a written statement?

21 MR. SADOWSKY: Objection, your Honor.

22 THE COURT: What difference does that make
23 with respect to those earlier transactions? You had better
24 explain that theory to me, because there is a rather broad
25 question here.

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1 MR. McALLISTER: I understand that. These
2
3 accounts should have been frozen, your Honor.

4 THE COURT: Which accounts are you talking about?

5 MR. McALLISTER: I'm talking about the accounts
6 of the customers of Dorsey and Company. These trades,
7 delivery against payment, without that letter of free
8 credit.

9 THE COURT: You are talking about the transactions
10 that took place with the Montreal concern; is that right?

11 MR. McALLISTER: That is correct. And they
12 affect the transactions in suit as well, your Honor.

13 THE COURT: Why?

14 MR. McALLISTER: Because of Regulation T, your
15 Honor. Regulation T requires that when you have a
16 delivery-against-payment account and you have a transaction
17 within ninety days in that account, delivery against
18 payment, you must obtain that written statement from the
19 other side or the receiving broker.

20 THE COURT: Who is the other side here?

21 MR. McALLISTER: Massey Lavoie in the first
22 instance, your Honor, and then --

23 THE COURT: What has Massey Lavoie got to do
24 with these transactions here?

25 MR. McALLISTER: These accounts should have been

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1 frozen, the Whitkind Realty and Williams Investors accounts
2 should have been frozen.
3

4 THE COURT: I understand the Massey Lavoie
5 accounts were all paid for, the drafts were accepted; is
6 that correct?

7 MR. McALLISTER: That is correct, your Honor.

8 THE COURT: What does that have to do with this
9 case?

10 MR. McALLISTER: Under Regulation T, your Honor,
11 whether they were paid for or accepted is insufficient,
12 you need a letter of free credit.

13 THE COURT: But those are not the securities
14 involved in this case.

15 MR. McALLISTER: Your Honor, the whole account
16 had to be frozen under Regulation T.

17 MR. SADOWSKY: Whose account?

18 MR. McALLISTER: The Whitkind Realty and
19 Williams Investors.

20 MR. SADOWSKY: With our customer?

21 MR. McALLISTER: At Dorsey and Company.

22 MR. SADOWSKY: There was nothing in the account.

23 THE COURT: Go ahead. Put your questions if
24 you think there is some relevance to it.

25 By the way, I don't have a copy of defendant's

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1 answer in this case. That was the responsibility of the
2 plaintiff to submit marked pleadings.
3

4 MR. SADOWSKY: Yes, your Honor, I thought we had.

5 MR. McALLISTER: Your Honor, our fifth affirmative
6 defense is contributory negligence.

7 THE COURT: Go ahead; put your questions.

8 Will you continue, please?

9 MR. McALLISTER: Yes, sir.

10 Q On August 15th, when you received your first
11 telephone call with regard to the transactions in suit,
12 who called you? Was it Tomarkin or Whitkind?

13 A I can't recall specifically.

14 Q Well, did you accept orders from either Tomarkin
15 or Whitkind for the other's account at any time?

16 A On one occasion.

17 Q Did you have a power of attorney for that in
18 writing?

19 A No, sir. I accepted an order from Mr. Tomarkin
20 for Mr. Whitkind, and subsequent to the receipt of the
21 order I telephoned Mr. Whitkind to inform him of this,
22 and he said that it was okay.

23 Mr. Tomarkin had told me that Mr. Whitkind wanted
24 to purchase such-and-such a stock. I later verified that
25 with Mr. Whitkind.

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2 Q Do you know a Roberto Tomarkia?

3 A No, sir.

4 MR. McALLISTER: Your Honor, at this time I
5 would like to have an exemplified copy of documents from
6 the New York County Court Clerk's office marked
7 for identification as Defendant's Exhibit B.

8 (Defendant's Exhibit B was marked for iden-
9 tification.)

10 MR. McALLISTER: Under Rule 44(a) I move
11 the admission of the document, your Honor.

12 MR. SADOWSKY: Your Honor, I'm familiar with
13 these documents. I object to them on the grounds of
14 relevancy.

15 What they are, they have to do with an indictment
16 of Mr. Tomarkin before a grand jury in the State of New
17 York, to which he pleaded guilty to one count and was
18 sentenced.

19 I might add that the conviction in question, the
20 transactions in question, have nothing to do with any of
21 these transactions. They have to do with the conduct of
22 Mr. Tomarkin with another bank of New York, the Franklin
23 National Bank, and an officer of that bank.

24 MR. McALLISTER: That reference is accurate,
25 your Honor, but this again goes to the question of

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contributory negligence and the question of whether the plaintiffs knew who Robert Tomarkin was, and the official court record shows that it's an alias, Robert Tomarkin is an alias.

THE COURT: I will look at it.

MR. McALLISTER: There are two indictments there, your Honor, one involving a stock swindle similar to this, and another one.

THE COURT: What is the date of this conviction?

MR. McALLISTER: I believe it was -- the date of conviction was September 1974, your Honor.

MR. SADOWSKY: It was after the commencement of this action he was convicted.

THE COURT: What is your theory? This is two years after the transaction.

MR. McALLISTER: That is correct.

That Robert Tomarkin, the name is an alias.

THE COURT: So? Two years later, after these transactions, it is to be attributed to the plaintiff?

MR. McALLISTER: That is correct, your Honor.

THE COURT: Objection sustained.

MR. McALLISTER: Your Honor, I think it's relevant that --

THE COURT: This is two years after the transactions at issue.

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MR. McALLISTER: I understand that, your Honor.

THE COURT: September 1974. These took place in September 1972. Let's have a sense of balance about evidence.

Q At the time these orders were given to you -- and I'm speaking again about the orders in August 1972 -- were any instructions given as to where the delivery was to be made by either Whitkind or Tomarkin?

A No, sir.

Q At what point in time were you instructed to make delivery?

A When we had the securities ready for delivery, about a day or two days, three days prior to the actual shipment by the Hibernia Bank, I was given the instructions to deliver to the bank in Haiti, for the account of Paul Supart & Company.

Q For the account of the two accounts?

A Of the two accounts.

Q It was the same type of transaction as the Massey Lavoie Transaction; is that correct?

A Yes.

Q And who gave you those instructions?

A Mr. Tomarkin.

Q And did you ask him who Paul Supart & Co. was?

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1
2 A Yes, sir.

3 Q And what did he tell you?

4 A He told me this was a friend of his and he had
5 used him several years previous to that to pick up some
6 transactions for him, and he had effected it through Paul
7 Supart.

8 Q The individual?

9 A Paul Supart & Company.

10 Q Did he tell you where Paul Supart & Company was
11 located?

12 A I don't recall specifically, but I seem to
13 remember him saying something about Miami, Florida. I
14 don't know if that is where he was located or what, but I
15 remember the mention of Miami, Florida.

16 Q And the transaction was to be Dorsey and Company
17 to the Hibernia National Bank to the Bank of Haiti to
18 Paul Supart & Co., which is probably located in the
19 continental United States?

20 A I don't know that it was located in the contin-
21 ental United States or not.

22 Q You didn't really know anything about Paul
23 Supart & Company?

24 A I asked Mr. Tomarkin who Paul Supart & Company
25 was, and he said that this was a company he had used to

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clear transactions through two or three years previous to this.

Q Did you make any inquiry of BNRH, the defendant here, as to whether they had ever heard of Paul Supart & Company prior to the delivery?

A No, sir, I just deposited the drafts with the Hibernia Bank and requested that they send them down there to be either paid or returned by the Bank of Haiti.

Q Did you make any inquiry of Paul Supart to see if they had an account?

A No, sir.

Q Did you make any inquiry of Paul Supart & Company to see if they had any free credit for either of these accounts, the Whitkind or the Tomarkin accounts?

A No, sir.

Q Were your instructions to the Hibernia National Bank in writing or were they oral?

A Yes, sir.

Q They were in writing?

A Yes.

Q Do you have a copy of those with you, or the originals?

A No, sir, it would be in the form of a deposit of a collection item.

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1 jkmch Vedros-cross 66
2 Q I think you stated on direct examination
3 that you heard on or about October 1st or September 29th
4 that the drafts and collection letters and certificates
5 apparently had not been received by BNRH; is that correct?

6 MR. SADOWSKY: I don't think that that fairly
7 characterizes what he said.

8 Q Well, after September 25, 1972, what was your
9 first communication -- you, Mr. Vedros -- from anybody
10 regarding these certificates?

11 A It was approximately ten days later, I would
12 imagine, with the Hibernia Bank, to ask if the draft
13 had been paid.

14 Q Are you familiar with the 35-day rule under
15 Regulation T?

16 A Yes, sir.

17 Q And the first transaction is on August 15th
18 and you send these certificates out for delivery on or
19 about September 25th?

20 A Yes, sir.

21 Q Is that correct?

22 A Yes, sir.

23 Q Is that not more than 35 days?

24 A I believe there's some holidays in there, which
25 are not counted under Regulation T.

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Q They're just business days, calendar days, business calendar days, the 35-day rule?

A I don't understand your question.

Q Well, you said there were holidays in there.

A Yes, sir.

Q Did you ever obtain an extension of credit?

A No, sir. These transactions were examined by the NASD and the SEC, both regulatory bodies, and we were not found in violation of any Regulation T, or whatever.

MR. McALLISTER: I move to strike the answer.

MR. SADOWSKY: I think it's appropriate, your Honor, in view of the inquiry.

THE COURT: What was the question?

(Record read)

THE COURT: I will let the answer stand.

MR. McALLISTER: I'd like to have marked two documents collectively as Defendant's Exhibit C for identification.

(Defendant's Exhibit C was marked for identification.)

Q Could you identify Defendant's Exhibit C, Mr. Vedros, please?

MR. SADOWSKY: May I see it? Do you have a copy

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2 for me?

3 A Yes, sir, I can.

4 Q What is that, please?

5 A This is a notice of decision of a complaint
6 against Dorsey and Company by Business District No. 5
7 of the NASD.

8 Q And are there certain findings of fact and
9 conclusions in there?

10 A Yes, sir, there are.

11 Q And at your deposition on July 16, 1974, were
12 you asked these questions and did you give these
13 responses?

14 "Q Did any Governmental agency investigate
15 the transactions in suit? By 'Governmental' I mean
16 SEC or NASD.

17 "A Yes, sir.

18 "Q Did they make any findings of fact?

19 "A No, sir.

20 "Q Did they commence any formal proceedings against
21 either Dorsey or Dorsey's customer?

22 "A No, sir."

23 Were those your answers to those questions?

24 A Yes, I believe that was with regard to
25 Regulation T which we were discussing. That is the reference

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1 I had.

2
3 Q And if I recall the Defendant's Exhibit C and
4 the decision by the District Business Conduct Committee
5 No. 5, it deals primarily with the Williams Investors
6 transaction, does it not?

7 MR. SADOWSKY: Objection, your Honor. The
8 document speaks for itself, and it's irrelevant, if
9 offered.

10 I object to the question, your Honor, because
11 the document speaks for itself.

12 THE COURT: Objection sustained.

13 MR. McALLISTER: Your Honor, at this time I'd
14 like to offer in evidence Defendant's Exhibit C.

15 MR. SADOWSKY: And I object to the offer, your
16 Honor, on the ground that it's not relevant to any issue
17 in this transaction.

18 THE COURT: It's a very extensive document.
19 What is its relevancy in terms of --

20 MR. McALLISTER: Your Honor, there was a finding
21 by the District Committee that there was a violation by
22 Dorsey and Company of Section 1, Article III, and
23 Section 2(1)(a) of Article III.

24 THE COURT: What does that provide?

25 MR. McALLISTER: They don't paginate the document,

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your Honor. I can find it for you.

MR. SADOWSKY: Your Honor, I think it's fair to say that it has to do with the way these transactions appeared on the books of Dorsey and Company. It had nothing to do with the way they handled the account or transmitted the document. It has only to do with how they recorded the transaction on their books, and there is a page here that spells it out in connection with this --

THE COURT: I will take it for whatever relevance it has. I'm not sure it has any.

MR. McALLISTER: Well, your Honor, the primary relevance is the finding of fact that there were violations, but also it goes to credibility.

THE COURT: That is a broad statement. Violations of what?

MR. McALLISTER: Section 1 and Section 2(1)(a) of Article III, the Rules of Fair Practice.

THE COURT: How is that relevant to the issues in this case? That is what I'm asking you.

MR. McALLISTER: The issue of credibility.

THE COURT: I will take it on credibility, particularly in light of the witness' last answer that the SEC and the NASD investigated and found no violations.

(Defendant's Exhibit C for identification was

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2 received in evidence.)

3 Q Mr. Vedros, when were you first contacted by
4 BNRH regarding --

5 MR. McALLISTER: Strike that.

6 Q -- by Hibernia National Bank regarding the
7 return of the package of the certificates, drafts and
8 collection letters?

9 A To the best of my knowledge, it was the
10 morning of the 22nd of December, 1972.

11 Q What steps did you take at that time to effect
12 collection, or whatever, with regard to the certificates?

13 A I informed Mr. Tomarkin and Mr. Whitkind
14 that we had recovered the securities and could make
15 delivery of them.

16 THE COURT: You dropped your voice again.

17 Read the witness' answer, please.

18 (Record read)

19 THE COURT: What happened at that point? That
20 is December 22nd, right?

21 THE WITNESS: Yes, your Honor.

22 At that time they told me, Mr. Tomarkin said
23 he would call me back and let me know what I could do with
24 the securities so far as delivery, and we drafted them up
25 to a bank in New York, which he was unable to pick up

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1 because of the serious loss in the stocks, and we never
2 did effect delivery.

3
4 Q What was the bank in New York?

5 A I don't recall right offhand, sir.

6 Q Why was he unable to effect the trade? It was
7 for delivery to himself or to the two entities, was it
8 not?

9 A Yes, sir.

10 Q Were there insufficient assets in the two
11 entities to pay for them?

12 A I would have to assume so.

13 THE COURT: You were entitled to pyament for
14 the securities at that time, were you not?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: Why did you sell against the market,
17 once they told you that they were unable to pick them up?

18 THE WITNESS: Because at that point in time we
19 had recovered the securities and were attempting to deliver
20 to the two accounts and get payment in full.

21 THE COURT: But you just said, as I understood
22 you, that you were not paid.

23 THE WITNESS: Yes, sir.

24 THE COURT: Should you not have sold the stock
25 then?

1
2 THE WITNESS: Negotiations with the two parties
3 involved ensued in hopes of getting full payment, rather
4 than to have to sell at a loss.

5 Q What was the actual -- can you recall the specific
6 delivery instructions in December 1972?

7 A No, sir.

8 Q Was it to a bank in New York?

9 A It was a bank in New York, yes, sir.

10 Q To the account of another brokerage house for the
11 account of the two?

12 A No, sir.

13 Q It was just to a bank in New York?

14 A Yes, sir.

15 Q Was it the Franklin National Bank?

16 A No, sir.

17 I believe it was the Bank of Israel or something
18 like that.

19 Q Had you ever had any prior dealings with that
20 Bank?

21 A I can't recall.

22 Q And when did Dorsey and Co. effect redelivery
23 of the securities after December 22nd, what date?

24 A I'm not certain of the date, but it would have
25 been shortly thereafter.

1
2 Q Late December? Early January?

3 A Probably.

4 THE COURT: When you say "effect redelivery,"
5 do you mean presented the securities for payment?

6 THE WITNESS: Yes, sir.

7 THE COURT: And they were not paid then?

8 THE WITNESS: No, your Honor.

9 THE COURT: Can't we get any dates here on this
10 matter?

11 MR. McALLISTER: Your Honor, this goes back to
12 my point.

13 We effectively ceased discovery as of
14 December 22nd because of the allegations in the complaint,
15 the allegations in Mr. Dorsey's affidavit in support of
16 the request for an order of attachment, and because
17 Mr. Dorsey, on his testimony at his deposition, stated
18 that the measure of damages was September 25th to
19 December 22nd. We did not pursue this area, your Honor.

20 MR. SADOWSKY: Your Honor, the witness was
21 examined at the deposition with respect to what happened
22 after the securities got back. He was examined with respect
23 to everything that occurred, once the securities came
24 back into his hands, so there is no question of surprise,
25 if that is what Mr. McAllister is looking to. He inquired

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2 into that.

3 THE COURT: Apart from the question of surprise,
4 isn't there a question whether or not the plaintiff was
5 required, once it knew that the alleged purchasers were
6 no going to make payment, to sell, and that is the
7 contention that is being made by Mr. McAllister, and you
8 framed the complaint that way, too.

9 MR. SADOWSKY: There is no question that we
10 framed --

11 THE COURT: You are running this date over to
12 sometime in May 1973.

13 MR. SADOWSKY: There is no question that is the
14 theory upon which the complaint was prepared. There is
15 absolutely no question about that.

16 However, what the witness has testified was that
17 when they came back in December -- on December 22nd, he
18 still attempted to effect complete payment for it. The
19 reason why he attempted to complete payment is obvious:
20 he had no reason to suspect that he would not be paid in
21 full.

22 THE COURT: Well, he knew, of course, he hadn't
23 been paid by the drawee down in Haitian.

24 MR. SADOWSKY: That is simply because they said
25 that the documents --

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2 THE COURT: What you are saying is that the
3 plaintiff continued to negotiate with people who had not
4 been making payment of the funds, and they carried this
5 on until sometime in May, and now you are trying to
6 increase the damages to May.

7 I think defendant is perfectly right in his
8 contention here. I think it was a reasonable time after
9 December 22nd, although the fixed the date December 22nd --

10 MR. PADOWSKY: Your Honor, every indication --

11 THE COURT: We are getting into a different area.
12 You have got to establish your claim first, and if you do
13 establish your claim, then there is the question of
14 damages.

15 Q After December 22nd, did Dorsey and Co. have
16 any communications with BNRH with regard to this matter?

17 A Not to the best of my knowledge.

18 Q What attempts, if any, did Dorsey and Company
19 make to locate Paul Supart & Co. after October 1, 1972?

20 A There were, I think, two or three telephone calls
21 made to Miami, Houston and Dallas, in an attempt to locate
22 a Paul Supart & Company.

23 Q And what were the results of those telephone
24 calls?

25 A Negative.

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2 Q In what sense? Who is the recipient of the
3 telephone calls?

4 A Dorsey and Company.

5 Oh, excuse me.

6 Q Whom did Dorsey and Company call?

7 A We called the information for telephone listings
8 in those three cities.

9 Q Did you check with the NASD?

10 A Yes, sir.

11 Q Did you check with the SEC?

12 A No, sir.

13 Q What was the result of the NASD check?

14 A There was no Paul Supart & Company.

15 Q When were those checks made; those telephone
16 calls, first?

17 A After the securities were returned.

18 Q Approximately how long after the securities were
19 returned?

20 A Shortly thereafter, I would imagine. I don't
21 recall specifically.

22 Q Late December? Early January?

23 A Yes, sir.

24 Q And the check with the NASD?

25 A The check with the NASD?

jkmch

Vedros-cross

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1 jkmch
2 A The check with the NASD was a check of the
3 listings that the NASD puts out of the broker-dealers,
4 both at home and abroad.

5 I had no certainty that Paul Supart & Company
6 was a stockbroker in the same sense that Massey Lavoie was.

7 Q I'm sorry. Say that again.

8 A I knew Massey Lavoie was a stockbroker in Canada.
9 I had nothing to believe that Paul Supart & Company was
10 a stockbroker anywhere, but I checked the listing of
11 stockbrokers in the event that they may be a stockbroker.

12 They were not represented to me to be a stock-
13 broker.

14 Q What were they represented to you to be?

15 A To be a friend and someone that Tomarkin knew who
16 had cleared transactions for him about two years previous
17 to the delivery in September of '72.

18 Q This was a man who had access to over \$600,000?

19 A I just stated who he was; to the best of my
20 knowledge.

21 Q When did you make a check of the NASD listings,
22 was that?

23 A Around the same time as the telephone calls.

24 Q Did you have any communications with BNRH after
25 December 22nd?

jkmch

Vedros-cross

79

1
2 A Not that I can recall.

3 Q In fact, the transactions in suit were your first
4 communication or dealings with BNRH, were they not?

5 A No, sir.

6 Q You had prior dealings with BNRH, Dorsey and
7 Company?

8 A Maybe I didn't understand your question.

9 Q The transactions in suit, were they the first
10 transactions or communications that you ever had with
11 BNRH?

12 A Yes, sir.

13 Q Sometime in around January 1, 1973, you attempted
14 to present the items for payment pursuant to Tomarkin's
15 and Whitkind's instructions; is that correct?

16 A Yes, sir.

17 Q And it was to a New York bank whose name you
18 can't quite recall, but it might have been the Bank of
19 Israel?

20 A Yes, sir.

21 Q What procedure did you follow? Did you redraft
22 drafts or create new drafts, append the certificates to
23 them and send them up to the Hibernia National Bank for
24 collection?

25 A New drafts were created and appended to the

jkmch

Vedros-cross

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securities, and drafted through the Hibernia National Bank.

Q And when were they sent out by the Hibernia National Bank?

A Late December, early January of 1973.

Q When was the next communication you had with anybody, either Hibernia National Bank or your two customers, with regard to those drafts?

A I can't recall specifically what date it was.

Q Was it ten days later? A week later?

A Could have been.

Q Did you get a communication from the New York bank at or about that time?

A I don't recall.

Q Did the New York bank D/K the trade?

A Eventually they did.

THE COURT: Did the New York bank what?

MR. McALLISTER: "D/K," don't know the trade, your Honor.

THE COURT: Don't what?

MR. McALLISTER: "Don't know."

Q How soon after January 1st did the New York bank D/K the trade?

A I can't recall specifically.

jkmch

Vedros-cross

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1

2

Q Was it two weeks after January 1st?

3

A Could have been.

4

Q Was it two months?

5

A No, sir.

6

Q Was it less than two months?

7

A I would say it would have been within two to four

8

weeks.

9

Q And was that your first communication that the

10

trade was being dishonored by the two customers of Dorsey?

11

A To the best of my knowledge it is.

12

Q What did you do after that, after you got

13

that communication from the New York bank?

14

A Subsequently conferred with Mr. Dorsey as to the

15

disposition of the matter.

16

Q What was the gist of that conversation?

17

A Basically he tried to contact Mr. Tomarkin to

18

try and effect delivery.

19

Q What was Mr. Tomarkin's excuse for not honoring

20

the drafts?

21

A The tremendous loss in the securities prevented

22

him from picking up the draft.

23

Q In other words, the transaction, as you under-

24

stood it, would be that the securities would be delivered

25

into the other brokerage house in the case of Massey

jkmch

Vedros-cross

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1 Lavoie, or in the case of Paul Supart -- we don't know
2 what it is -- and the securities would be sold and the
3 proceeds from the sale would pay for your draft; is that
4 correct?
5

6 A I have no understanding of that.

7 Q Isn't that what you figured was happening, though,
8 that they were free-riding?

9 A I didn't figure anything.

10 Q Weren't your accounts, in effect, free-riding
11 here?

12 A Not to my knowledge.

13 THE COURT: Do you have anything else, Mr.
14 McAllister?

15 MR. McALLISTER: Just checking my notes, your
16 Honor.

17 Your Honor, at this time I would merely like to
18 offer into evidence the deposition of Mr. Vedros.

19 MR. SADOWSKY: I object to it, your Honor,
20 unless there are specific --

21 THE COURT: You may offer into evidence specific
22 portions.

23 MR. McALLISTER: Well, certainly Page 20, your
24 Honor, which was read into the record.

25 THE COURT: And anything else you want to offer

jkmch

Vedros-cross

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under the rule.

MR. McALLISTER: I can't think of anything right now, your Honor.

THE COURT: All right. We will take Page 20.

MR. McALLISTER: Defendant's Exhibit D.

(Defendant's Exhibit D was received in evidence.)

Q Mr. Vedros, do you feel that you really knew your customers under Rule 4?

MR. SADOWSKY: Objection, your Honor.

THE COURT: I will let him answer.

You may answer.

A Yes, sir, I did.

Q You don't think --

A 100 percent.

Q You don't think that you were set up by either of these individuals?

A As it looks like now, it's possible.

THE COURT: But you didn't at the time of the transaction?

THE WITNESS: But I didn't at the time.

I acted in good faith. We had a history with both accounts over a period of 4-1/2 months, with good relationships, drafting of securities out of the country, large amounts, large sales, and never any problem.

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Trial Testimony.

* * * * *

jkmch

AFTERNOON SESSION

1:45 p.m.

(In open court)

MR. SADOWSKY: Your Honor, I do not see Mr. McAllister in the courtroom at this time.

THE COURT: Well, we will wait for him..

(Pause)

THE COURT: All right, proceed. Call your next witness.

MR. SADOWSKY: Your Honor, I think that the record should reflect at this point that plaintiff attempted to take a pretrial deposition of Robert Tomarkin and Lloyd Whitkind, and that each of those witnesses declined to answer questions on the grounds of self-incrimination, that their right to invoke the privilege was tested in this court, and their right to assert it was granted in this court.

Do you have any objection to that statement, Mr. McAllister?

MR. McALLISTER: No; it's accurate.

MR. SADOWSKY: It's accurate, your Honor.

Your Honor, at this time I would like to read portions from the deposition of the defendant. I think that the record should reflect that the pretrial deposition

jkmch

"Martineau

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incorrectly sets forth the name of the witness. It appears in the deposition as Marteau, M-a-r-t-e-a-u. His correct name is Martineau, M-a-r-t-i-n-e-a-u.

I am reading now from the deposition of the defendant, by Gerard Martineau, on January 17, 1975.

I am reading in the first instance from Page 2, Line 25:

"Mr. Martineau, where do you reside" --

I'm sorry. I will read the exact text.

"Q Mr. Marteau, where do you reside?

"A In Port-au-Prince, Haiti.

"Q Are you an officer of Banque National de la Republic d'Haiti?

"A Yes, I am. I am the controller.

"Q From here on in, when I refer to "the bank," you understand I mean the defendant in this lawsuit; is that all right?

"A All right.

"Q And you are the controller.

How long have you been the controller, Mr. Marteau?

"A Since 1957."

I am now going to read from Page 5, Line 19:

"Q You are now aware, are you not, Mr. Marteau, that certain documents were transmitted to your bank sometime in 1972; are you aware of that?

jkmch

"Martineau

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"A Yes, I am aware of that.

"Q Do you have any knowledge whatsoever as to what happened when the documents transmitted by Hibernia Bank arrived at your bank? Do you have any knowledge at all as to what happened to that envelope containing these documents?

"A Well, after investigation of the matter, due to the claim entered by Hibernia Bank and by Dorsey and Company, we disclosed that on that date the mail clerk received the papers and opened the package, and when he saw the name of the drawer was Paul Supart & Company, which is a firm or person not existing in Haiti, without any address given, he thought that these documents were misdirected to the bank, and were not pertaining to our bank, so he sent it back to the post office to be returned to the sender.

"Q Could the mail clerk make that decision without discussing it with an officer of the bank?

"A No, he should not have done it, but he was a new clerk in the department of incoming mail.

"Q How would the mail clerk know whether Paul Supart, the firm, as well as Paul Supart, an individual, had an account at the bank? How would he have such knowledge?

"A Most of the customers and/or firms reside or are

jkmch

"Martineau

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established at Port-au-Prince, and so they're known to the bank. Everyone in the bank would have knowledge of that. Although he was a new clerk in that department, he certainly had experience of which firms were established in Haiti; you know, the city is not that big that you can't tell everybody.

"Q What was the name of the mail clerk?

"A Theodate.

"Q Could you spell that, please, for the reporter?

"A T-h-e-o-d-a-t-e.

"Q Is Mr. Theodate still with the bank?

"A Yes, he's still there.

"Q In what capacity is he now employed?

"A He is the head of the incoming mail department."

I am now going to read from the bottom of Page 7, beginning with Line 24:

"Q Then, based upon your investigation, Mr. Theodate sent the documents back to the post office?

"A Yes.

"Q Including the envelope in which these --

"A The shares were included."

I am now reading from Page 14, Line 23 -- no, I will omit that portion, your Honor.

I'm reading now from Page 21, Line 4:

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Trial Testimony.

* * * * *

jkmch

Martineau-direct

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1
2 A No, in the first date of December.

3 Q The first days of December?

4 A Yes.

5 Q What action, if any, was taken by BNRH after
6 that report was made to you?

7 A Well, we replied to the Hibernia Bank by cable
8 stating that the documents -- after investigation, we
9 found out that the documents had been actually received
10 but sent back because we thought it was an error.

11 Q And were the certificates located at or about
12 that time?

13 A Which certificates, please?

14 Q The certificates that were sent to BNRH. When
15 your investigation was made, did your investigation also
16 include, or the investigatory report, did it also include the
17 location of the certificates?

18 A No. The clerk say that he remembered having
19 received that remittance.

20 Q I am sorry. What?

21 A The clerk said that he had received at the
22 mail department the documents with the letter of remittance.

23 Q And did the report indicate what the mail clerk
24 did with those documents?

25 A Yes, he said that he sent it back to the post

jkmch

Martineau-direct

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office to be sent to the sender, to be sent back to the sender.

Q And did the report indicate when --

THE COURT: Sent back to the defendant, did you say?

THE WITNESS: No, to the Hibernia Bank.

THE COURT: To the Hibernia Bank?

THE WITNESS: Yes.

THE COURT: I thought you said to the defendant.

THE WITNESS: No, to the sender.

THE COURT: "Sender"; I'm sorry.

Q Did the report indicate when the mail clerk in BNRH returned the package to the post office?

A Yes. He stated that it was the date following the date of receipt of the documents.

Q And do you know what that date was?

A It should be September 30th, because I think they were received on September 29th.

Q And did your report indicate when the documents were sent by the post office to the Hibernia National Bank?

A Yes, because we had requested a certificate from the post office, and they told us that they'll give us a certificate stating that it had been sent, I think, on December 2nd.

jkmch

Martineau-direct

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Q 1972?

A 1972.

Q Did the report indicate what method was used for sending the documents back?

A No. Just a statement that it was sent back at that date.

Q Was any investigation made by your Bank regarding Paul Supart & Co.?

A Yes. We did. We made an investigation to confirm the assumption of the clerk which was not investigated fully, but we found out that it was actually, really not known to anybody in Haiti.

Q Mr. Martineau, would you look at Plaintiff's Exhibit 11, and is that a copy of a cable sent by your Bank to Hibernia National Bank?

A Yes, it's a copy of that cable.

Q Did you ever receive a response to that cable?

A No, we didn't receive any answer.

Q Other than a lawsuit?

A No.

THE COURT: Is that an exhibit in evidence?

MR. McALLISTER: Yes, it's in evidence.

Plaintiff's Exhibit 11, your HONOR.

THE COURT: Oh, 11. That is the cable of

jkmch

Martineau-direct/cross

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December 19th?

MR. McALLISTER: Yes, sir, the cable of
December 19th.

Q I'm going to show you two exhibits, Plaintiff's
Exhibit 4 and Plaintiff's Exhibit 5, which are cables
dated October 17, 1972 and October 20, 1972, and in your
investigation in this matter, was there any record of the
Bank that indicates that these documents were received, or
the originals thereof were received by your Bank?

A Yes, they both have been received by the Bank.

Q Mr. Martineau, has your Bank ever received
documents similar to Plaintiff's Exhibit 1 with stock
certificates attached for collection before, to your
knowledge, before September 25, 1972?

A No, not to my knowledge.

MR. McALLISTER: I have no further questions, your
Honor.

CROSS-EXAMINATION

BY MR. SADOWSKY:

Q Mr. Martineau, you have received letters of
collection, have you not?

A Yes, we have.

Q Do you receive them daily?

A Daily, yes.

133a

Trial Testimo. .

* * * * *

134a

artineau-cross

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lady?

testifying in my office, Mr.

d me that Mr. Theodate should

did not? Do you remember that?

re changing that testimony?

not make inquiry?

iefs; no; to the people to whom

ry.

clerk?

I would like at this time,

ified by the witness, to introduce

entification.

R: No objection.

Exhibits Nos. 4 and 5 for iden-

d in evidence.)

when did the Bank learn for the

Paul Supart & Co. in connection with

ey received the photocopies of the

ernia Bank.

1

jkmch

M

2

Q And that would

3

which has been marked a

4

A Yes, it is.

5

Q And I think you

6

was received by you some

7

correct?

8

A That is correct

9

Q Did the Bank

10

notify the Hibernia Bank

11

Paul Supart & Company at

12

A Yes, we did af

13

the cable that you have s

14

Q You notified t

15

Company?

16

A No. We notifi

17

remittance, but that we

18

Q I'm sorry, Mr.

19

stood my question.

20

Did you notify

21

knew nothing of Paul Sup

22

A No, it was not

23

Q In what cable?

24

A In the cable th

25

Q So, you did not

135a

Martineau-cross

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and be the letter of November 16th
is Exhibit 8?

our testimony is that that letter
came early in December; is that

correct.

notify -- your Bank -- did your Bank
that it knew nothing about
that time?

after the investigation. That is
been.

tell them that there was no Paul Supart &

tell them that we hadn't received
had sent it back.

Martineau, I don't think you under-

tell the Hibernia Bank that your Bank
Supart & Company?

stated in the cable.

that we sent to the Hibernia Bank.

tell them; is that correct?

jkmch

Martineau-cross

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1 A No; that is right.

2 Q You did not tell them?

3 A No.

4 Q And you finally did send a cable to the Hibernia
5 Bank, and that is Exhibit 11; is that correct?

6 A Yes. That is it.

7 Q And, of course, you did not mention Paul Supart
8 in that cable, did you?

9 A No, we didn't.

10 Q And, as a matter of fact, Mr. Martineau, you
11 offered to collect these items in this cable, did you not?

12 A We what, please?

13 Q You offered to collect these items in this
14 cable?

15 A Yes, to take care of the collection; that is
16 right.

17 Q Against Paul Supart & Company?

18 A Yes, to investigate and state that we didn't
19 know them.

20 MR. SADOWSKY: I have no further questions.

21 MR. McALLISTER: No redirect, your Honor.

22 THE COURT: All right.

23 You are excused, Mr. Witness.

24 (Witness excused)

137a.

Trial Testimony.

* * * * *

1 jkmch Pierre-Louis-direct

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2 particularly, and he's subject to cross-examination the same
3 way as any other witness.

4 MR. PIERRE-LOUIS: I'm ready to swear.

5 V I C T O R P I E R R E - L O U I S ,

6 called as a witness by the defendant, being first
7 duly sworn through the interpreter, testified as
8 follows:

9 THE COURT: Is that your first name, Pierre?

10 THE WITNESS: No.

11 THE COURT: What language do you speak?

12 THE WITNESS: I speak French.

13 THE COURT: Do you understand the interpreter?

14 THE WITNESS: Certainly. That is my language.

15 THE COURT: And you understand him?

16 THE INTERPRETER: Yes, I understand.

17 THE COURT: You have no difficulty in conversing
18 with one another?

19 THE WITNESS: None.

20 DIRECT EXAMINATION

21 BY MR. McALLISTER:

22 Q Mr. Pierre-Louis, are you duly licensed to practice
23 law in the Republic of Haiti?

24 A Surely.

25 Q What schools or universities did you attend?

1 jkmch Pierre-Louis-direct

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2 A The Faculty of Law of Port-au-Prince, Haiti.

3 Q Is that a university?

4 A Yes, it is.

5 Q When did you graduate?

6 A End of July 1952.

7 Q When were you licensed to practice law?

8 THE COURT: Are you going to remember all that
9 now?

10 THE INTERPRETER: Yes.

11 A Four days after my graduation I swear, and I have
12 to spend two years of study before I could have my license
13 that I have in 1954, and then I can be at all the courts
14 in Haiti, the high courts, even the accounts court, accounts
15 court in Haiti.

16 Q Mr. Pierre-Louis, have you practiced law in
17 the Republic of Haiti?

18 A Yes, I did.

19 Q And how long have you practiced law in Haiti?

20 A Since 1954, I do only that.

21 Q Do you specialize in any particular branch of
22 law?

23 A In Haiti there is no specialization, but the
24 matter that interest me more is the civil law, the
25 matter of housing and rent, and some international law

1 jkmch

Pierre-Louis - direct

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2 and constitutional law relative to the international
3 law.

4 Q Mr. Pierre-Louis, have you written any legal
5 texts or articles?

6 A I didn't write any books, but beside of being
7 a lawyer, I am a journalist and I used to give my opinion
8 on law, many laws.

9 Q In newspaper articles?

10 A Yes.

11 Q Mr. Pierre-Louis, have you been associated with
12 any law schools or universities in your legal capacity?

13 A I do teach usually law in the University, Institute of
14 Information, technical and commercial aspect.

15 Q Mr. Pierre-Louis, I'm going to pose a hypothetical
16 question to you.

17 MR. SADOWSKY: Your Honor, before the question
18 is posed, may I have some questions on the voir dire?

19 THE COURT: Yes.

20 VOIR DIRE EXAMINATION

21 BY MR. SADOWSKY:

22 Q Mr. Pierre-Louis, have you ever represented any
23 banks?

24 A Actually, I am now a counsel of the National
25 Bank of Haiti.

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Trial Testimony.

* * * * *

jkmch

Pierre-Louis - direct

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Haiti a package consisting of collection letters, drafts of a Louisiana corporation, and stock certificates which the bank in Haiti receives on September 29, 1972, and the collection letters contain the following language: "If unpaid, please wire stating reason before returning draft and, in the event of delay of payment or acceptance, or dishonor, notify us promptly giving reasons," and also contains language: "Nonacceptance and nonpayment to be advised by cable" --

THE INTERPRETER: It's very long, but I tell him the question is not asked yet, you just stopped the question.

I would like that you let me write the question, because it's a very long one.

MR. McALLISTER: Would that be all right, your Honor?

THE COURT: Well, I think it would be helpful. If the witness feels that he needs the question in writing, I will allow it.

MR. McALLISTER: Shall I start again?

THE INTERPRETER: Yes.

Q If, on September 25, 1972, a bank in Louisiana, United States, sends to a bank in Haiti a package consisting of collection letters, drafts of a Louisiana

jkmch

Pierre-Louis - direct

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1 corporation, and stock certificates, which the bank in
2 Haiti receives on September 29, 1972, and the collection
3 letters contain the following language: "If unpaid, please
4 wire, stating reason, before returning draft" and "In
5 the event of delay of payment of payment or acceptance,
6 or dishonor, notify us promptly giving reasons," and
7 "Nonacceptance and nonpayment to be advised by cable,"
8 and "Deliver documents against payment and remit proceeds
9 by cable," and the drafts stated that they were payable
10 on sight, and the documents identified the drawee as for
11 the account of a nonexistent company as agent for another
12 entity located in New York, and the Bank in Haiti opens
13 the envelope and returns it the next day to the post office of
14 Haiti for transmittal to the sender, and the post office in Haiti
15 holds the envelope for two months, and then sends the
16 package to the bank in Louisiana, which receives it on
17 December 22, 1972; what is your opinion, if any, of the
18 liability of the Bank in Haiti to the Louisiana corporation
19 which was the drawer of the drafts, under the laws of
20 Haiti?
21

22 MR. SADOWSKY: I object to the question, your
23 Honor. Your Honor, the hypothetical question attempts
24 to encompass the whole complexities of this case, every
25 fact. In some cases they're in error.

144a

Trial Testimony.

* * * * *

jkmch

Pierre-Louis - cross

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THE INTERPRETER: He said it's hard to answer by a part of a phrase, but when he said there is compensation, he wants to explain.

THE COURT: All right. Explain.

THE WITNESS: When a party is at fault, that party has to be condemned.

When both are faulty, and they send back the two parties, you know, because what one had to give, the other one had to give the same thing, and they just dismiss the case.

THE COURT: Does that conclude your direct examination, counsel?

MR. McALLISTER: Yes, sir.

CROSS-EXAMINATION

BY MR. SADOWSKY:

Q Mr. Pierre-Louis, is the law of Haiti codified?

A What do you say by "codified"?

Q Is it written?

THE INTERPRETER: He said there is all the law, the written law, and beside that there is the jurisprudence.

And he said what the jurisprudence is in the way the High Courts judge the question.

Q Is there a civil code?

THE INTERPRETER: He said, "Here, I have it now."

jkmch

"Dorsey

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MR. McALLISTER: No other witnesses, but I would like to read a portion of a transcript of a deposition.

(Witness excused)

THE COURT: Go ahead.

MR. McALLISTER: Your Honor, I'm about to read from the deposition of George Dorsey taken on July 16, 1974. The deposition was sworn to by Mr. Dorsey on August 23, 1974.

Page 4, Line 7:

"Q Mr. Dorsey, please state your full name.

"A George Dorsey.

"Q Where do you live?

"A I live in New Orleans, 1012 Hibernia.

"Q Are you presently employed?

"A I am president of Dorsey and Company.

"Q Inc.?

"A Inc."

Skiping down to Line 21.

"Q Are you the chief executive officer?

"A I am.

"Q What is the business of Dorsey and Co., Inc.?

"A We're primarily in the brokerage and investment banking business."

jkmch

"Dorsey

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Turning to Page 16, Line 16:

"Q Have you had any conversations with anybody at Paul Supart & Co.?

"A No.

"Q Did you make any attempts to check the bona fides of Paul Supart & Co.?

"A No.

"Q Did you ever attempt to check the bona fides of Williams Investors?

"A No.

"Q Did you ever attempt to check the bona fides of Whitkind Realty?

"A No.

"Q Did you ever attempt to check the bona fides of the principals of either Whitkind Realty or Williams Investors?

"A No.

"Q At any time?

"A No.

"Q Did anybody in Dorsey attempt to ever check the bona fides of either Williams Investors and Whitkind Realty?

"A To the best of my knowledge, no.

"Q Do you know if anybody at Dorsey and Co., Inc.,

jkmch

"Dorsey

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attempted to check the bona fides of Paul Supart & Co.?

"A No.

"Q Do you know what the investment objective of either Whitkind Realty or Williams Investors was?

"A No.

"Q Do your new account forms show what the investment objective of those two entities were?

"A No."

And, your Honor, that concludes the reading of the deposition, and I would like to have those pages marked into evidence as Defendant's Exhibit --

THE COURT: What pages are they?

MR. McALLISTER: Pages 4, 16 and 17, your Honor.

(Defendant's Exhibit E was received in evidence.)

MR. McALLISTER: Your Honor, at this time I'd like to renew my request to have Defendant's Exhibit B, consisting of the court files for Roberto Tomarkia, alias Robert Tomarkin, offered into evidence and accepted into evidence, the reason being, your Honor, at the time this was initially offered, the Court indicates that because the date of conviction was September 27, 1974, the Court felt that the time element was too removed from the dates of the transactions in suit, and I would just like to point out to the Court that

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

149a

DORSEY & CO., INC.,

Plaintiff-Appellant,

against

BANQUE NATIONAL DE LA REPUBLIC D'HAITI,

Defendant-Appellee

**AFFIDAVIT
OF SERVICE**

ON APPEAL FROM THE UNITED STATES DISTRICT COURT--
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Nathan Chambers, being duly sworn, deposes and says that he is over the age of 18 years, is not a party to the action, and resides at 510 Atlantic Avenue, Brooklyn, New York
That on September 26, 1975, he served 1 copies of Appendix and two copies of Appellant's Brief;
on

LUNNEY & CROCCO,
Attorneys for Defendant-Appellee,
20 Exchange Place
New York, New York 10005

by delivering to and leaving same with a proper person or persons in charge of the office or offices at the above address or addresses during the usual business hours of said day.

... Nathan Chambers ...

Sworn to before me this
26th day of September, 1975

John V. Desposito
JOHN V. DESPOSITO
Notary Public, State of New York
No. 30-0932350
Qualified in Nassau County
Commission Expires March 28, 1977